

EXHIBIT G

* * C O N F I D E N T I A L * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JENNIFER S. FISCHMAN,

Plaintiff,

-against-

Index No. 18-cv-08188

mitsubishi chemical holdings, america, inc.;
mitsubishi chemical corporation; mitsubishi
chemical holdings corporation; nicholas oliva, in
his individual professional capacities; donna
costa, in her individual and professional
capacities; and john does 1-10, in their
individual and professional capacities,

Defendants.

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September 30, 2021
10:09 a.m.

DEPOSITION of PAT SAUNDERS, a
Non-Party witness herein, taken by the attorneys
for the respective parties, pursuant to Notice,
held via web conference at the above date and
time before Toni Musacchia, a Stenotype Reporter
and Notary Public within and for the State of New
York.

1 * * C O N F I D E N T I A L * *

2 A P P E A R A N C E S :

3 VALLI KANE & VAGNINI LLP
4 Attorneys for Plaintiff
5 600 Old Country Road
6 Garden City, New York 11530

7 BY: MATTHEW L. BERMAN, ESQ.

8 CLARICK GUERON REISBAUM LLP
9 Attorneys for Defendant, Donna Costa
10 220 Fifth Avenue, 14th Floor
11 New York, New York 10001

12 BY: NICOLE GUERON, ESQ.

13 GORDON REES SCULLY MANSUKHANI, LLP
14 Attorneys for Defendants, Mitsubishis
15 Chemical Holdings America, Inc., Donna Costa and
16 Nicholas Oliva
17 One Battery Park Plaza, 28th Floor
18 New York, New York 10004

19 BY: BRITTANY L. PRIMAVERA, ESQ.
20 and
21 MERCEDES COLWIN, ESQ.

22 SHEARMAN & STERLING, LLP
23 Attorneys for Defendant,
24 Mitsubishi Chemical Holdings Corporation
25 599 Lexington Avenue
New York, New York 10222

BY: SAM JOLLY, ESQ.

20

21 ALSO PRESENT:

22 Jennifer Fischman

23

24

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1 * * C O N F I D E N T I A L * *

2 FEDERAL STIPULATIONS

3

4 IT IS HEREBY STIPULATED AND AGREED by and
5 between the parties hereto, through their
6 respective Counsel, that the certification,
7 sealing and filing of the within examination will
8 be and the same are hereby waived;

9

10 IT IS FURTHER STIPULATED AND AGREED that
11 all objections, except as to the form of the
12 question, will be reserved to the time of the
13 trial;

14

15 IT IS FURTHER STIPULATED AND AGREED that
16 the within examination may be signed before any
17 Notary Public with the same force and effect as
18 if signed and sworn to before this Court.

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* * C O N F I D E N T I A L * *

THE REPORTER: It is hereby stipulated and agreed by and between counsel for all parties present that pursuant to Federal Rule of Civil Procedure 28 (a)(2), this deposition is being conducted remotely and that the court reporter shall be permitted to administer the oath to the witness via videoconference. The witness and all counsel are in separate remote locations and participating via Zoom, telephone or any web conference meeting platform under the control of Bee Reporting Agency, Inc.

It is further stipulated that this videoconference will not be recorded in any manner and that any recording without the express written consent of all parties shall be considered unauthorized, in violation of law and shall not be used for any purpose in this litigation or otherwise.

Before I swear in the witness, I will ask each counsel to stipulate on the record that I, Toni Musacchia, the court reporter, may swear in the witness even though I am not physically in the presence of the

1 * * C O N F I D E N T I A L * *

2 witness and that there is no objection to
3 that at this time, nor will there be an
4 objection at a future date.

5 MR. BERMAN: So stipulated.

6 MS. PRIMAVERA: So stipulated.

7 MS. GUERON: So stipulated.

8 MR. JOLLY: So stipulated.

9 THE REPORTER: Ms. Primavera, can you
10 represent that to the best of you knowledge
11 and belief, that the witness appearing today
12 via web conference is, in fact, Pat
13 Saunders?

14 MS. PRIMAVERA: Yes, I can.

15 P A T S A U N D E R S,

16 the witness herein, having first been duly
17 sworn by Toni Musacchia, a Notary Public in and
18 for the State of New York, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BERMAN:

22 Q. Please state your name for the record.

23 A. Pat Saunders.

24 Q. Please state your address for the
25 record.

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2 A. 4425 Downing Place Way, Mount Pleasant,
3 South Carolina 29466.

4 Q. Good morning, Ms. Saunders, my name is
5 Mathew Berman, I'm one of the attorneys for the
6 Plaintiff in this case, Jennifer Fischman.

7 Today I will be asking you a series of
8 questions, which you will be answering having
9 sworn to tell the truth.

10 If you don't hear one of my questions, please
11 let me know and I'll repeat it more loudly so
12 it's more audible.

13 If you don't understand one of my questions,
14 please let me know and I'll do my best to
15 rephrase it. It doesn't do me any good to get an
16 answer from you on a question you haven't
17 understood.

18 If you do understand my question, feel free
19 to answer it, of course. And if you do answer my
20 question, I'll take that to mean that you have
21 understood it.

22 Today, as you can see, we have a court
23 reporter here who is taking down the testimony
24 for a transcript. It's very challenging for a
25 court reporter to take down testimony for more

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2 than one speaking at a time. I will do my best
3 today to wait until you completed your responses
4 to a question before I move on to my next
5 question. And I would ask you, if possible,
6 please wait until I completed my entire question
7 before you begin to respond even if you know what
8 I am going to say.

9 It's important today that responses be verbal
10 because the court reporter cannot take down
11 gestures.

12 From time to time you may hear an objection
13 from counsel to the form of a question. Unless
14 you're instructed not to answer by your attorney,
15 I'll still expect you to provide a response.

16 I do have one caveat with respect to that,
17 it's not my intention today to ask you about any
18 requests for legal advice that you made or any
19 legal advice that you've been provided by your
20 counsel. So to the extent that you can answer
21 without revealing that information, please do so.
22 Please do not reveal any attorney/client
23 privileged information to me during your
24 responses. If that makes it challenging for you
25 to provide a response, then just tell me you

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2 can't respond to it and tell me why.

3 From time to time you may wish to take a
4 break, that's perfectly fine and I'm happy to
5 accommodate any breaks that anyone who is
6 participating today wishes to take. I'm sure
7 I'll wish to take some from time to time as well.
8 If you do wish to take a break, please let me
9 know. I would expect that if there's a question
10 pending you answer that one and then we can, of
11 course, take a break.

12 With respect to the time period that I'm
13 inquiring about today. Unless otherwise noted,
14 I'm interested in the period of time from the
15 year 2014 to the present. I understand that you
16 may have knowledge of events predating that. If
17 it's necessary to provide that information in
18 response to a question, by all means please let
19 me know. But generally speaking, just for
20 clarity, when I ask you about events, I'm looking
21 for information concerning the period from 2014
22 onward. Do you understand those things?

23 A. Yes.

24 Q. Do you have any questions about anything
25 I just explained?

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2 A. No, I do not.

3 Q. With that in mind, let's move on.

4 I also ask witnesses the same three questions
5 to start. It's nothing personal to you or to any
6 other witness.

7 Are you currently taking any medication which
8 could impact your ability to testify truthfully
9 and accurately today?

10 A. No.

11 Q. Are you suffering from any medical
12 conditions which could impact your ability to
13 testify truthfully and accurately today?

14 A. No.

15 Q. Do you suffer from any medical condition
16 which impairs your memory to the extent that it
17 might impact your testimony today?

18 A. No.

19 Q. Have you done anything to prepare for
20 today's deposition?

21 A. I have had conversations with counsel.

22 Q. Without revealing the contents of any
23 communications that are privileged, how many
24 conversations have you had with your counsel?

25 A. We have had two to three conversations.

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2 Q. Were you provided with any documents to
3 review by your counsel?

4 A. Yes, I was.

5 Q. Do you know whether all the documents
6 you reviewed were produced to us during the
7 course of this litigation?

8 A. Yes, they were.

9 Q. Have you ever been a witness in a
10 lawsuit before?

11 A. I have not.

12 Q. Do you understand that you are not named
13 as a Defendant in the case?

14 A. I do.

15 Q. You're here only as a witness; you
16 understand that, correct?

17 A. Yes.

18 Q. How much time did you spend with your
19 attorneys -- without revealing any
20 communications -- in order to prepare for today's
21 deposition?

22 A. Probably about three -- between three
23 and four hours in total.

24 Q. Did you review any of the deposition
25 transcripts in this case?

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2 A. No.

3 Q. Are you currently employed?

4 A. No.

5 Q. Are you retired?

6 A. I am.

7 Q. When did you retire?

8 A. I retired on April 1st of 2018 from
9 MCHA.

10 Q. So that raises an interesting point
11 today. For the sake of today's deposition, just
12 as a shorthand, we can use acronyms to refer to
13 some of the corporate names in this case.

14 You just mentioned MCHA, is that Mitsubishi
15 Chemical Holdings America?

16 A. Yes, it is.

17 Q. So can we awe degree when ever the term
18 "MCHA" is used today, it refers to Mitsubishi
19 Chemical Holdings America?

20 A. Yes.

21 Q. We may also refer to MCHC, are you
22 familiar with that entity?

23 A. Mitsubishi Chemical Holdings
24 Corporation.

25 Q. So if we use the term "MCHC," will you

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2 understand me to be referring to Mitsubishi
3 Chemical Holdings Company?

4 A. Yes.

5 Q. Great. When you retired in April of
6 2018, did you receive a pension?

7 A. No.

8 Q. So since the date of your retirement,
9 have you received any compensation in any form
10 from Mitsubishi Chemical Holdings America?

11 A. No.

12 Q. When you were working for MCHA, what was
13 your job title?

14 A. I was director of human resources.

15 Q. When did you first become the director
16 of human resources?

17 A. I was hired by MCHA in September of
18 2009.

19 Q. September of 2009?

20 A. 2009, yes.

21 Q. Did you hold the title of director for
22 the entire duration of your employment?

23 A. Yes.

24 Q. Who hired you?

25 A. I was hired by the president of the

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2 company was Hiroo Tanaka, T-A-N-A-K-A, and Donna
3 Costa was the general counsel -- executive vice
4 president and general counsel and she primarily
5 in the interview -- primarily led the interview
6 process when I was hired.

7 Q. Was Ms. Fischman working for MCHA when
8 you joined the company?

9 A. Yes, she was.

10 Q. When you came into the company there was
11 a legal department at the company, correct?

12 A. Correct.

13 Q. Were you primarily responsible for the
14 HR function within MCHA?

15 MS. PRIMAVERA: Objection to the form.

16 You can answer.

17 A. Yes.

18 Q. Okay. And that included the legal
19 department, correct?

20 A. No. No. The HR function was separate
21 from the legal department.

22 Q. Thank you. My question perhaps was
23 ambiguous.

24 What I'm asking you is whether in the
25 performance of your HR duties, your HR duties

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2 were also inclusive of HR duties concerning legal
3 department.

4 Did you provide HR for the legal department?

5 MS. PRIMAVERA: Objection to form. You
6 can answer.

7 A. In my role as HR, I was the HR person,
8 if you will, to all of the employees in MCHA;
9 tax, legal, accounting, finance. If I'm
10 understanding your question correctly.

11 Q. Yes. Thank you.

12 So you provided you provided human resources
13 services for the entirety of MCHA, correct?

14 A. Correct.

15 Q. That included the legal department,
16 correct?

17 A. Correct.

18 Q. Okay. So were you involved in hiring?

19 A. Yes.

20 Q. Were you involved in firing?

21 A. Yes.

22 Q. Were you involved in promotion?

23 A. Yes.

24 Q. Were you involved in setting
25 compensation?

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2 A. Yes.

3 Q. Were you involved in the performance
4 review process?

5 A. Yes.

6 Q. Okay. So with respect to the legal
7 department, was there -- what was the review
8 process, generally speaking?

9 A. The review process in the legal
10 department was the same process that we use
11 throughout the MCHA organization. The direct
12 supervisor of the employee would conduct the
13 performance evaluation for the employee, have a
14 dialogue with the employee about the performance
15 evaluation, complete a written performance
16 evaluation form, assign a rating. And that was
17 basically the process.

18 Q. How often were you these reviews
19 conducted within the legal department?

20 A. They were conducted annually.

21 Q. All right. Within the legal department
22 with respect to the attorney positions, can you
23 tell me how many different attorney positions
24 there were during your tenure?

25 A. (No verbal response.)

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2 Q. Meaning the type -- the job types.

3 MS. GUERON: Objection.

4 A. There were approximately four as best as
5 I can recall.

6 Q. I'm only --

7 A. I believe --

8 Q. Have you completed your response?

9 A. I believe there were about four
10 positions within the legal department.

11 Q. I'm only referring to the attorney
12 positions, just for clarification; does that
13 help?

14 A. Then there would be three as I recall.

15 Q. Okay. So the most junior of those
16 positions would be called what?

17 MS. PRIMAVERA: Objection.

18 Q. Do you understand my question?

19 A. Yes.

20 Q. Okay.

21 A. I believe the title was associate
22 counsel.

23 Q. Did MCHA have a corporation counsel
24 position?

25 A. No.

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2 Q. Okay.

3 MR. BERMAN: Let the record reflect
4 we're showing the witness an exhibit
5 previously marked as Plaintiff's Exhibit 2.

6 Can you scroll through it or reduce it
7 so the witness can review the document in
8 its entirety.

9 Take a look and let the court reporter
10 know how to move the document so you can
11 look it over to your satisfaction.

12 THE WITNESS: Is there more to the
13 document?

14 MR. BERMAN: Yes. Let me know when
15 you're ready.

16 THE WITNESS: I'm ready.

17 MR. BERMAN: If you scroll up, Toni, to
18 the very top of the document.

19 Q. I'll represent to you this is a document
20 that was produced to us during this litigation.

21 It purports to be a position profile for the
22 job title corporate counsel.

23 Does that refresh your recollection
24 concerning any of the legal positions at MCHA?

25 A. Yes, I believe I called it the associate

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2 counsel. Looking at this document, as best as I
3 can recall, I believe the title is correct,
4 corporate counsel.

5 Q. Wasn't there also an a GC assistant
6 general counsel or associate general counsel
7 position?

8 A. There was an assistant general counsel
9 position, yes.

10 Q. Okay. And was that a more senior
11 position than the corporate counsel position?

12 A. Yes.

13 Q. Was there a position more senior than
14 the associate general counsel position?

15 A. Than the assistant general counsel
16 position?

17 Q. Yes.

18 A. The general counsel position.

19 Q. Were you responsible --

20 MR. BERMAN: Withdrawn.

21 Q. This document we're looking at,
22 Plaintiff's Exhibit 2, do you know who created
23 this document?

24 A. I believe this was created by Donna
25 Costa. I'm not 100 percent sure.

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2 Q. Did you have any involvement in the
3 creation of this document?

4 A. I -- I don't recall. I don't -- I don't
5 believe so.

6 Q. Do you --

7 A. Generally, the kind of key
8 responsibilities, qualifications -- the key
9 responsibilities in particular would be
10 determined by the business. And other than
11 perhaps reviewing and maybe providing some, you
12 know, formatting and -- consistency and
13 formatting among the various positions with --
14 descriptions for the organization, the -- again,
15 key responsibilities would generally -- would be
16 provided by the business.

17 Q. Do you know when this document was
18 created approximately?

19 A. I don't know.

20 Q. Okay.

21 A. I don't know.

22 Q. Did you discuss the content of this
23 document with Ms. Costa?

24 A. It's -- again, it's been a while. I
25 don't recall if we had specific discussions about

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2 the content.

3 Q. Do you know why this document was
4 created.

5 A. This particular document I can't -- I
6 can't -- again, I can't say specifically when it
7 was created. You know, when I came into the
8 organization, obviously, positions existed.
9 There could have been prior documentation. I do
10 recall that at one point MCHA was undergoing an
11 audit from MCHC and as part of, you know, a
12 complete review and audit of the business, we
13 were pulling various documents together and we
14 wanted to have -- ensure that we had position
15 descriptions for everyone in the organization.
16 So at that time position descriptions were
17 updated. It was -- yes, it was an audit, as I
18 recall, we went through. So there could have
19 been variations on this position profile but I do
20 recall at one particular time we, you know, made
21 sure we had a position description for everyone
22 in the organization.

23 Q. Okay. So with respect to the content of
24 this document, does this align with your
25 understanding of the duties and responsibilities

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2 of the corporate counsel position?

3 MS. PRIMAVERA: Objection.

4 Q. Do you understand the question?

5 A. I'm not sure I do understand the
6 question.

7 Q. Okay. With respect to the time period
8 from 2014 until you left the company, does the
9 content of this document match up to the job
10 duties and responsibilities of the corporate
11 counsel position?

12 MS. PRIMAVERA: Objection. You can
13 answer.

14 Q. In other words, does this document
15 accurately reflect what the corporate counsel job
16 was?

17 MS. PRIMAVERA: Objection. To the
18 extent you understand and can answer, go
19 ahead, you can answer that.

20 MR. BERMAN: Please let's avoid any
21 speaking objections.

22 Q. Go ahead.

23 A. I -- I'm sorry, can you repeat the
24 question because I do want to make sure I'm
25 answering accurately.

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2 MR. BERMAN: Toni, can you read it back,
3 please.

4 (Whereupon, the last question read
5 back.)

6 THE WITNESS: I have to -- you know --
7 I'm not the -- I'm not -- in my HR function,
8 I know generally the duties and
9 responsibilities. I can't say as the HR
10 person not being a legal expert and
11 understanding nuances of legal skills and
12 what they might do, that this is 100 percent
13 completely accurate to the duties of the
14 corporate counsel position.

15 Q. Okay. With that caveat in mind, does
16 this generally reflect the duties and
17 responsibilities of the corporate counsel as that
18 position was actually performed at the company?

19 MS. GUERON: Objection.

20 Q. Do you understand the question?

21 A. Again, it wouldn't -- with that caveat,
22 to the best of my knowledge, without the --
23 again, without the intimate understanding of what
24 is performed in that in the role, such as
25 corporate counsel, I believe it would, yes.

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2 Q. And with respect to the experience and
3 qualifications --

4 MR. BERMAN: Toni, if you can scroll
5 down so those are fully visible.

6 Q. -- do these experience and
7 qualifications generally match up with your
8 understanding of what's required for the role?

9 MS. PRIMAVERA: Objection.

10 MS. GUERON: Objection.

11 A. Again, based on my role as HR, I'm not
12 the one who would determine these types of
13 qualifications.

14 Q. I didn't ask you who determined them. I
15 asked you if they're generally matching up with
16 your understanding of what was required.

17 MS. PRIMAVERA: Objection.

18 MS. GUERON: Objection.

19 A. When you say are they generally matching
20 up with what is required, I'm not sure I
21 understand what you're asking me.

22 Q. What is the general purpose of a
23 position profile in HR?

24 A. To establish a baseline of criteria for
25 which you are evaluating a -- to establish the

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2 baseline criteria for the position, the general
3 qualifications, the general duties of that
4 position.

5 Q. Okay. Have you completed your response?

6 A. Yes.

7 Q. Okay. Does this document do those
8 things for the corporate counsel position?

9 MS. GUERON: Objection.

10 A. Yes.

11 Q. Okay. Thank you.

12 MR. BERMAN: Toni, can you pull up
13 Plaintiff's Exhibit 4.

14 Let the record reflect this is an
15 exhibit that's been previously marked as
16 Plaintiff's Exhibit 4.

17 Q. I'll direct your attention to the top
18 portion of the document.

19 Do you see where it says job title, assistant
20 general counsel, corporate?

21 A. Uh-huh.

22 Q. Is this a position profile for the
23 assistant general counsel position?

24 A. For corporate, yes.

25 Q. Okay. And so does this document serve

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2 the purpose that you identified previously, which
3 I'll paraphrase as serving as a baseline for the
4 duties and responsibilities of the position and
5 the requirements?

6 MS. PRIMAVERA: Objection.

7 Q. Was that a fair paraphrasing of your
8 description of the purpose of the position
9 profile document?

10 A. Yes.

11 Q. Does this document serve that purpose
12 for the assistant general counsel position?

13 A. Yes.

14 Q. Were you involved in the preparation of
15 this document?

16 A. Again, no, not in a substantive way.

17 Q. Did you confer with anyone in the
18 preparation of this document?

19 A. It would have been -- sorry, did you say
20 did I confer with anyone?

21 Q. Yes.

22 A. The content would have been prepared
23 most likely by Donna.

24 Q. Did you discuss the creation of this
25 document with Ms. Costa?

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2 A. Not that I recall, no.

3 MR. BERMAN: We can set this one aside
4 for a moment.

5 Toni, let's look at Plaintiff's
6 Exhibit 5.

7 Please scroll through and allow the
8 witness to look over the document to her
9 satisfaction.

10 THE WITNESS: You can move down.

11 MR. BERMAN: Let the record reflect
12 we're showing the witness an exhibit
13 previously marked as Plaintiff's Exhibit 5.

14 Q. Ms. Saunders, I'll direct your attention
15 to the job title at the top of document where it
16 says general counsel and chief compliance
17 officer, do you see that?

18 A. Uh-huh.

19 Q. Again, the same question I asked you
20 with respect to the two other documents.

21 Does this position profile serve the function
22 that you described previously, which I'll
23 paraphrase, as establishing a baseline of duties
24 and responsibilities and criteria for the
25 position?

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2 MS. PRIMAVERA: Objection.

3 A. Yes. The only thing I would add is --
4 and I would add this on all of the profiles that
5 I've been presented with -- is at a point -- they
6 were they were created at a point in time and
7 position profiles, again, are created at a
8 particular point in time and may become outdated
9 for -- because of changes in the business needs.

10 Q. Okay. Have you --

11 A. I'm sorry?

12 Q. Have you completed your response?

13 A. Yes.

14 Q. Okay. Now, you said you joined MCHA in
15 2009, correct?

16 A. Yes.

17 Q. Were these position profiles created
18 after you joined the company?

19 A. These -- the format of these particular
20 profiles look like they were created after I
21 joined the company. What I'm suggesting is the
22 content in the profiles could have been in
23 existence prior to joining the company.

24 Q. Understood. Have you completed your
25 response?

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2 A. Yes.

3 Q. When you first joined Mitsubishi, was
4 the entity that you worked for called something
5 different than MCHA?

6 A. Yes.

7 Q. Was it MCUSA when you joined?

8 A. Yes.

9 Q. And at some point did the name of the
10 entity that employed you change to MCHA?

11 A. Yes.

12 Q. Do you know if that was approximately in
13 2011?

14 A. Approximately.

15 Q. Okay. So in 2011 you --

16 MR. BERMAN: Withdrawn.

17 Q. Did you see the content that was in
18 these three position profiles before it was
19 formalized?

20 A. I don't recall. I may not have.

21 Q. Do you know whether you made any edits
22 to the content in these position profiles, you
23 personally?

24 A. Again, I would not have made the
25 substantive bullet points in these profiles.

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2 Q. Did you explain to me or did I get this
3 right that the substantive content was provided
4 by Ms. Costa?

5 MS. PRIMAVERA: Objection.

6 A. Yes, that is what I said.

7 Q. Okay. During your tenure at MCHA did
8 you hire anyone into --

9 MR. BERMAN: Withdrawn.

10 Q. Did you use these position profiles for
11 hiring during your tenure at MCHA?

12 A. Yes.

13 Q. How were they used in connection with
14 hiring?

15 A. As a -- again, as a guideline to
16 evaluating candidates.

17 Q. When you -- was there a time during your
18 tenure at MCHA when you had vacant positions you
19 wanted to fill?

20 A. Are you referring to the legal
21 department still?

22 Q. Yes. Unless I specify otherwise, my
23 intention is to ask you about the workings of the
24 legal department.

25 A. Yes -- yes, but vacancy in the sense

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2 that -- as best as I can recall, from hiring in
3 the legal department, they were additional
4 positions, not someone left and we replaced.

5 Q. Okay. So in what you just described, in
6 these additional positions, was there a process
7 by which additional positions were created?

8 A. A formal process?

9 Q. Well, formal or informal. How did you
10 come to learn that there was an additional
11 position to fill?

12 A. I would learn -- generally, Donna was in
13 the general counsel position at the time and
14 wanted -- had approval for -- to hire a new
15 position -- a counsel position and generally
16 described to me what that position would be --
17 what level of position she was looking for.
18 Likewise, when Nick was in the role same thing --
19 likewise, Nick was in the role there was a hire
20 and Jennifer also.

21 Q. Okay. So during your tenure at MCHA,
22 did there ever come a time when you had an
23 additional position that became available for a
24 corporate counsel level attorney?

25 A. Yes.

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2 Q. Okay. So when approximately is the
3 first time that that happens?

4 A. Approximately -- oh, jeez.

5 Q. Is there a particular individual you're
6 recollecting?

7 A. I believe one of the first in that level
8 position would have been Joe Sharinski.

9 Q. With respect to Joe Sharinski, did he
10 come into the company as a corporate counsel?

11 A. I believe so, yes.

12 Q. Okay. So can you explain to me --

13 MR. BERMAN: Withdrawn.

14 Q. Was there -- are you familiar with the
15 term "requisition" for a job opening?

16 A. Yes.

17 Q. Did MCHA have a process by which it
18 would requisition job openings?

19 A. No.

20 Q. So what was the process for identifying
21 a job opening?

22 A. Again, MCHA was an organization of 35 to
23 40 employees. We were small. It was
24 conversations between myself and in this case it
25 would have been head of the legal department

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2 going to add to staff, level position --

3 generally the level of the position and from

4 there worked with an outside recruiting firm.

5 Q. Okay. Have you complete your response?

6 A. No. Just generally for these positions

7 would work with an outside recruiting firm.

8 Q. To circle back a little bit, I think I

9 heard you tell me you were informed by the lead

10 attorney that there was a position open; did I

11 get that right?

12 A. Yes -- yes.

13 Q. So at the time that you joined the

14 company that would have been Donna Costa, right?

15 A. Yes.

16 Q. And so -- and that -- and Donna Costa

17 was still the lead attorney at the time Mr.

18 Sharinski was hired, correct?

19 A. Yes.

20 Q. So at the time of that position opening

21 up, did you get informed of the opening by Ms.

22 Costa?

23 A. Yes.

24 Q. Okay. And then did you work with an

25 outside recruiter to fill that position?

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2 A. Generally with the legal positions Donna
3 would work directly with the outside firm.
4 Again, the substantive discussions of what we
5 were -- you know, what the organization was
6 looking for, I might interact on more of an
7 administrative level, although -- you know,
8 again, I'm thinking back because it's been a
9 number of years -- but for the most part the
10 legal positions when they were filled and the
11 conversations with the recruiters were had by
12 either Donna or Jennifer or Nick.

13 Q. With respect to the opening itself of
14 the position for corporate counsel, do you know
15 whether any approvals were required above the
16 level of the head attorney? When I say "head
17 attorney," we're talking about the general
18 counsel position, right?

19 A. Right.

20 Q. Do you know whether any approval above
21 the level of general counsel were required to
22 fill the corporate counsel position?

23 A. Other than budgetary with the president,
24 that would be it.

25 Q. Okay. With respect to budgetary

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2 approval from the president, you're referring to
3 the president of MCHA?

4 A. Yes.

5 Q. Did MCHA have a legal budget?

6 A. Yes.

7 Q. In the case of an increase in the number
8 of positions, that would require an increase in
9 the budget for the legal department, correct?

10 A. Certainly on the -- yes, on the salary
11 lines, yes -- salary and fridge line, yes.

12 Q. Because when you add an employee, you
13 add to your payroll, right?

14 A. Yes.

15 Q. Do you know who was responsible for that
16 level of approval?

17 A. Ultimately the budget for MCHA was the
18 president.

19 Q. Did you finish your response?

20 A. Yes.

21 Q. Did you participate in the budgeting
22 process?

23 A. Yes.

24 Q. What was your degree of participation in
25 that process?

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2 A. I would complete the budget for the HR
3 function.

4 Q. When you say "complete the budget,"
5 generally, what does that mean?

6 A. I would receive, you know, a worksheet
7 from the prior year that had all of the different
8 budgeting type of categories and any changes and
9 expenses within those categories; additions,
10 deletions, I would make those changes.

11 Q. Did you have any conversations with the
12 president of MCHA concerning -- establishing the
13 amount of the budget for any of its departments
14 within MCHA?

15 A. Not direct -- I don't believe -- I may
16 have had conversations directly with the
17 president or it would have been the director of
18 accounting and finance.

19 Q. Okay. Would that have been Chin?

20 A. Yes.

21 MR. BERMAN: And just for the record --

22 A. And a prior individual whose name was
23 Kohei.

24 Q. Can you tell us Kohei's full name?

25 A. You're challenging my memory. I'm

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2 sorry. Kohei San --

3 Q. If you don't know, you can just tell
4 me --

5 A. Oh my gosh, I'm sorry.

6 Q. Would it be Kohei Iguchi --

7 A. No, Chin was Iguchi -- Chin Iguchi.
8 Kohei Ichiya, I-C-H-I-Y-A.

9 Q. And when we use the term "San" that's
10 S-A-N, correct?

11 A. Yes. And that's -- yes.

12 Q. And that's a connotation of respect in
13 Japanese culture, correct?

14 A. Yes. They very often went by single
15 names. And as I just said, Kohei San.

16 Q. So it's comparable to the western title
17 "Mr.," right?

18 A. I don't know that I would call it
19 comparable as it was different culturally. It
20 was a sign of respect. Yes, in respect that
21 addressing someone as Mr. so and so may be viewed
22 as more respectful, yes.

23 Q. So in connection with establishing the
24 budget for new positions, do you know whether --
25 do you know who made the decision to open the

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2 position?

3 MS. PRIMAVERA: Objection.

4 Q. Well, for example, I think you said you
5 were talking about Mr. Steven -- what was his
6 name? The first name you said was hired into
7 this position?

8 A. Joe Sharinski --

9 Q. Sharinski. I'm sorry, I'm talking over
10 you a little I don't mean to. I'll slow down.

11 A. It's okay.

12 Q. With respect to the position that
13 Mr. Sharinski was hired into, do you know who
14 made the determination to open that position up?

15 A. Donna.

16 Q. Do you know whether Donna required any
17 approvals from higher up within the organization
18 in order to open that position?

19 MS. PRIMAVERA: Objection.

20 A. I think, as I said before, the -- you
21 know, the president was in the position of being
22 the ultimate person responsible for budget for
23 MCHA.

24 Q. Okay. Do you know the source of MCHA'S
25 funds for payrolling employees?

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2 MS. PRIMAVERA: Objection.

3 Q. Do you know whether --

4 MR. BERMAN: I'll rephrase the question.

5 Q. Do you know whether MCHA had any
6 revenue?

7 A. MCHA was a services organization that
8 charged fees back to the affiliates for the
9 services provided. MCHA was not a profit
10 company.

11 Q. Have you complete your response?

12 A. Yes.

13 Q. Was any part of your responsibility
14 determining the amount of charges that MCHA
15 required the affiliates to pay?

16 A. For the HR function, yes.

17 Q. So with respect to the HR function, was
18 there an independent amount that was decided upon
19 to charge an affiliate?

20 MR. BERMAN: Let me rephrase the
21 question.

22 Q. How was it determined how much to charge
23 for the HR function to the affiliates?

24 A. It -- there's -- I'm not sure I can
25 clearly answer your question. There was a charge

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2 back amount in place when I joined the
3 organization. And just to explain, for example,
4 part of my function was -- and the shared
5 services function was we provided payroll
6 services to certain smaller companies, we
7 provided a health and welfare benefit program
8 that certain companies can participate in as well
9 as an operated 401(k) plan. There was a charge
10 back for those types of services in place when I
11 joined the company.

12 And, generally, in terms of what would
13 be charged back was there was not a scientific
14 approach to determining that it really kind of
15 was on that baseline that I inherited, so to
16 speak, if we brought in additional business to --
17 into one of the programs, we would assign a
18 charge back that was similar to like a business
19 of a similar size.

20 Q. Have you completed your response?

21 A. Yes.

22 Q. Is it fair to say that MCHA incurred
23 certain costs in order to provide these shared
24 services to the affiliates?

25 A. Yes.

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2 Q. Is it fair to say that those costs were
3 a portioned amongst the affiliates?

4 A. They -- yes, the costs were apportioned.
5 I don't believe the cost were apportioned
6 100 percent.

7 Q. But you gave the example of a new
8 business coming in and getting shared services,
9 right?

10 A. Right.

11 Q. So if a new business came in to have
12 shared services provided to it by MCHA, would
13 that -- would that, generally speaking, increase
14 MCHA'S cost of providing shared services overall?

15 MS. PRIMAVERA: Objection.

16 Q. Do you understand the question?

17 A. (No verbal response.)

18 Q. Like if you get a new company coming in,
19 you're now providing services to an additional
20 client, does that increase the cost that you
21 have?

22 MS. PRIMAVERA: Objection.

23 A. It could potentially increase the cost
24 but minimally -- could be minimally also.

25 Q. Okay. So then assuming --

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2 MR. BERMAN: Withdrawn.

3 Q. In a scenario where the costs were
4 expected to only increase minimally, like you
5 just described, if a new client joined the share
6 services, would that have the overall effect of
7 reducing all the other affiliates costs?

8 MS. PRIMAVERA: Objection.

9 A. Theoretically.

10 Q. Okay. Do you know whether in practice
11 that's how it worked?

12 MS. PRIMAVERA: Objection.

13 A. Again, I can only speak for the HR
14 function on that. In certain instances it may
15 have but it was -- you know, it was not a total
16 cause and effect type of budgeting.

17 Q. Okay. Was there some kind of process by
18 which MCHA would endeavor to charge the
19 affiliates a fair price for their portion of the
20 services that were used?

21 A. I don't -- I don't think I understand
22 what you're asking me was.

23 MR. BERMAN: Toni, can you read it back,
24 please.

25 (Whereupon, the last question was read

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2 back.)

3 MS. PRIMAVERA: I'll place an objection
4 to that question, please.

5 Q. Ms. Saunders?

6 A. Can you read it back again, please.

7 (Whereupon, the last question was read
8 back.)

9 A. I just -- I feel -- the budgeting
10 process at MCHA, again, was not my function. All
11 of the -- you know, the technical process behind
12 it, I'm not familiar with. So I'm -- I don't
13 know how -- I'm struggling to try to respond to
14 your question. I'm sorry.

15 Q. Let me try to make it easier, Ms.
16 Saunders. If you don't know something, just tell
17 me you don't know.

18 A. Okay.

19 Q. I'm only here to find out what you know.
20 I can't ask you to predict the future. I can't
21 ask you for things you don't know.

22 A. Okay.

23 Q. If there's subject matter that I'm
24 asking you about, just tell me "I'm sorry, I
25 don't know that" and I'll move on to the next

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2 question, okay.

3 A. Okay.

4 MS. PRIMAVERA: Matthew, I'm sorry,
5 unless there's a question you want to
6 complete, I need a five-minute break.

7 MR. BERMAN: That's fine. Let's take a
8 break.

9 MS. PRIMAVERA: Thank you.

10 (Whereupon, a brief recess was taken.)

11 Q. Ms. Saunders, before when I asked you
12 about hiring for positions, I asked you if there
13 were ever any open positions and you responded --
14 I'm paraphrasing, again, that you were mainly
15 concerned with filling additional positions; do
16 you remember that?

17 A. Yes.

18 Q. But there were occasions where you had
19 turnover in attorney positions, right?

20 A. Yes. Yes.

21 Q. Can so, for example, there was an
22 attorney at MCHA named Nathan Gallop, do you
23 remember him?

24 A. Yes.

25 Q. So he was in an attorney position and he

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2 to parted from the company, correct?

3 A. Yes.

4 Q. And that created an opening, correct?

5 A. Yes, it did. Yes.

6 Q. And that opening was subsequently
7 filled, correct?

8 A. Yes.

9 Q. Was there any difference between the
10 process that you had for filling a position that
11 was vacant compared to filling a new
12 incrementally added position?

13 MS. PRIMAVERA: Objection.

14 Q. Do you understand my question?

15 A. Yes. No.

16 Q. There was no difference, is that what
17 you just told me?

18 A. Substantively, no.

19 Q. Okay. So open positions and new
20 positions were filled in essentially the same
21 method, right?

22 MS. PRIMAVERA: Objection.

23 Q. Ms. Saunders?

24 A. Sorry, I'm -- yes, again, the process
25 would be substantively the same.

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2 Q. Okay. With respect to Mr. Gallop's
3 departure from the company, do you know whether
4 he received a severance package?

5 A. He did.

6 Q. Did the company have a policy pursuant
7 to which it would offer severance?

8 A. No, we did not have a formal policy.

9 Q. What about an informal practice, how was
10 severance managed at the company?

11 A. Severance was managed generally on a
12 case by case basis.

13 Q. What were the factors that would play
14 into whether severance was provided and the
15 amounts?

16 MS. PRIMAVERA: Objection.

17 MS. GUERON: Objection.

18 A. The factors -- some of the factors that
19 might come into play would be the reason the
20 individual was leaving the company, being
21 terminated, years of service.

22 Q. Have you completed your response?

23 A. Yes.

24 Q. Were there any attorneys that we haven't
25 mentioned yet other than Ms. Fischman who

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2 involuntarily departed from the company during
3 your tenure there?

4 MS. PRIMAVERA: Objection.

5 A. Yes.

6 Q. How many?

7 A. There was one other, other than Nathan.

8 Q. Who was the other one?

9 A. Andrew Caezar?

10 Q. Did Mr. Caezar receive a severance?

11 A. Yes.

12 Q. Were there any other --

13 MR. BERMAN: Withdrawn.

14 Q. Were there any other non-employees in
15 the legal department who involuntarily departed
16 from the company during your tenure?

17 A. Not that I recall.

18 Q. Were there any other positions outside
19 the legal depart but within MCHA where there were
20 involuntary departures during your tenure?

21 A. Yes.

22 Q. For any of those departures, did the
23 people not receive a severance?

24 A. As best as I can recall they received a
25 severance.

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2 Q. During your tenure with MCHA, did the
3 company have a progressive discipline policy?

4 A. No.

5 Q. Were employees generally counseled on
6 their performance if they failed to meet
7 expectations during your tenure at the company?

8 MS. PRIMAVERA: Objection.

9 A. That would depend on what the
10 performance issue was.

11 Q. What do you mean by that?

12 A. If the performance issue was quality of
13 work related, then the employee could potentially
14 be counseled to improve the quality of work.

15 If the issue with the individual was
16 determined to be an egregious act, then they
17 would not be counseled.

18 Q. With respect to the employees in the
19 legal department, you referenced two involuntary
20 departures so far, right?

21 A. Uh-huh.

22 Q. With respect to each of those, were they
23 -- were they both --

24 MR. BERMAN: Withdrawn.

25 Q. With respect to the involuntary

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2 departures in the legal department of attorney
3 positions that we talked about, were any of those
4 departures that were involuntary not related to
5 performance?

6 MS. PRIMAVERA: Objection.

7 Q. Do you understand my question?

8 A. Would you please repeat the question.

9 MR. BERMAN: Toni, can you read it back.

10 (Whereupon, last question read back.)

11 A. No.

12 Q. So were each of those employees
13 counseled about their performance prior to their
14 involuntary terminations?

15 A. Yes.

16 Q. Would that be reflected in their annual
17 performance reviews?

18 A. Performance issues, yes.

19 Q. So is it safe to say that if an employee
20 was not meeting performance expectations then
21 that would be reflected in their performance
22 review?

23 MS. PRIMAVERA: Objection.

24 MS. GUERON: Objection.

25 A. There would be an indication in the

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2 performance review of an issue, yes.

3 Q. For the legal department, during your
4 tenure at the company, did you participate in the
5 year end review process?

6 A. It -- can you be more specific about
7 your question. Participate in what?

8 Q. What was your involvement in the
9 performance review process for the legal
10 department during your time with MCHA?

11 A. Generally to set the schedule, have
12 the -- advise the managers to complete the
13 performance reviews for their people, get the
14 ratings from the managers and have some, you
15 know, basic discussion about the individual and
16 rating and -- you know, I would compile that for
17 the organization.

18 Q. Okay. And the reviews were reduced to
19 writing, correct?

20 MS. PRIMAVERA: Objection.

21 Q. You can answer.

22 A. There was a document that was the
23 written document. I'm not sure what you mean by
24 reduced to writing.

25 Q. Well, the review of the employee was

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2 documented in a writing, correct?

3 A. That's correct.

4 Q. That writing was delivered to the

5 employee, correct?

6 A. Yes.

7 Q. Was there also a face to face meeting to

8 discuss the review?

9 A. Most managers would have face to face
10 meetings, yes.

11 Q. With respect to Ms. Costa during her
12 tenure as general counsel, did she have face to
13 face meetings with her subordinates to discuss
14 their reviews?

15 MS. PRIMAVERA: Objection.

16 MS. GUERON: Objection.

17 Q. Do you understand my question?

18 A. I understand your question, yes. I
19 believe she did, yes.

20 Q. Okay. Did Ms. Costa discuss the reviews
21 with you prior to her discussions with the
22 employee?

23 MS. PRIMAVERA: Objection.

24 MS. GUERON: Objection.

25 A. Not necessarily.

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2 Q. Were you present during Ms. Costa's
3 discussions with her subordinates as part of the
4 review process?

5 MS. PRIMAVERA: Objection.

6 Q. Do you understand my question?

7 A. Yes. No. Yes, I understand your
8 question. My answer is no.

9 Q. So you were not present during Ms.
10 Costa's review meetings with her subordinates,
11 correct?

12 A. Correct.

13 Q. Did you receive copies of the written
14 performance reviews for each of the employees
15 that were attorneys in the legal department
16 during your time there?

17 A. Yes.

18 Q. Did you discuss those written reviews
19 with Ms. Costa concerning her subordinates?

20 A. No, not necessarily. No.

21 Q. So she --

22 MR. BERMAN: Withdrawn.

23 Q. Would she prepare the written reviews
24 for her subordinates?

25 A. Yes.

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2 Q. She would provide a copy of that to you?

3 A. Yes.

4 Q. Did you make any changes to her
5 documents?

6 A. No.

7 Q. So once it was provided to you, what did
8 you do with it?

9 A. We put it in the employee personnel
10 file.

11 Q. To your knowledge were all of the
12 year-end reviews for employees true and correct
13 with respect to the legal department?

14 MS. PRIMAVERA: Objection.

15 A. To the best of my knowledge.

16 Q. Are you familiar with Ms. Fischman's
17 performance reviews?

18 A. Not in detail.

19 Q. Have you seen Ms. Fischman's reviews
20 from 2011 through the last year of her
21 employment?

22 A. Not -- not in the documents I was
23 provided.

24 Q. Were you provided with copies of Ms.
25 Fischman's reviews in connection with this case?

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2 A. I don't -- no. Not "I don't know." The
3 answer is no.

4 Q. Okay. When you first joined MCHA, do
5 you know what position Ms. Fischman had?

6 A. I believe she was corporate counsel.

7 (Whereupon, Ms. Colwin dropped off the
8 web conference.)

9 MS. PRIMAVERA: I'll send her a text.
10 We can continue.

11 MR. BERMAN: Toni, if you can pull up
12 Plaintiff's Exhibit 7. If you can just
13 maybe shrink it a little bit so we can see
14 more of the page.

15 If you allow the witness to direct you
16 through the document so she can familiarize
17 herself.

18 THE WITNESS: Scroll down.

19 MR. BERMAN: Let me know when you're
20 ready.

21 THE WITNESS: Can you scroll down
22 please.

23 MR. BERMAN: So let the record reflect
24 that Ms. Saunders is being shown an exhibit
25 previously marked as Plaintiff's Exhibit 7.

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2 Q. Ms. Saunders, does this refresh your
3 recollection as to the job title that Ms.
4 Fischman had in 2011, 2012?

5 A. Yes.

6 Q. What was her job title on or about March
7 of 2012?

8 A. Corporate counsel.

9 Q. Does this document reflect her job
10 performance as corporate counsel for the year
11 2011?

12 A. Yes.

13 Q. So it's an annual review, right?

14 A. Yes.

15 Q. During your tenure were all of the
16 annual reviews for attorneys in substantially the
17 same format?

18 MS. PRIMAVERA: Objection.

19 A. Yes.

20 Q. So this is a year end review, right?

21 A. Yes.

22 Q. So reviews were delivered in --

23 MR. BERMAN: Withdrawn.

24 Q. This says on it that it was the
25 performance manager program for the year 2011 but

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2 the review date says March of 2012, do you see
3 that?

4 A. Yes.

5 Q. So is that typical, you have, you know,
6 a review in let's say the first quarter of the
7 new year to review the performance over the prior
8 12 months?

9 A. Yes.

10 Q. So this review would cover calendar year
11 2011 but would be delivered in the first quarter
12 of 2012, right?

13 A. Yes.

14 Q. So you looked through her performance
15 review for the year. Is it fair to say she had
16 positive performance for the year?

17 MS. PRIMAVERA: Objection.

18 Q. You can answer.

19 A. The document reflects Donna's evaluation
20 of her with a rating that was positive, yes.

21 Q. What portion of the document do you look
22 at to determine the rating?

23 A. There's a page that you check box as to
24 the performance rating.

25 Q. Is that Section II, knowledge and skills

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2 application, which is in this document is on
3 page -- it's Bates-stamped DEF0000624 on the
4 bottom left -- on the bottom right corner.

5 MR. BERMAN: Can you scroll down, Toni,
6 to page 64 -- actually, I'm looking at the
7 wrong page -- 65. Keep going. Stop. This
8 is page 621. Can you scroll up a little
9 bit.

10 Q. We're looking at the page marked 621 and
11 there's a box there that says skill and knowledge
12 area, do you see that?

13 A. Yes.

14 Q. Is this portion of the document that we
15 would look at to determine the rating?

16 A. No, I believe I'm -- no, I'm referring
17 to what I believe is the next page.

18 MR. BERMAN: Can you scroll down, Toni,
19 to the next page.

20 (Whereupon, Ms. Colwin re-entered web
21 conference.)

22 Q. Is this the box that you're referring to
23 where it says Section IV, overall level of
24 performance?

25 A. Yes.

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2 Q. So Ms. Fischman received a rating of
3 exceeds expectations for the 2011 period, right?

4 A. Yes.

5 Q. Okay. And then if you scroll down to
6 page 622, there's a spot on the document for
7 signature of the manager or supervisor, right?

8 A. Yes.

9 Q. Ms. Costa was Ms. Fischman's supervisor
10 during that period of time, right?

11 A. Yes.

12 Q. Okay. So the narrative that's on the
13 prior page, 621, under Section III, comments,
14 that's provided by the supervisor, correct?

15 A. Yes.

16 Q. And that's uniformed throughout the
17 performance reviews as far as you're aware of,
18 right?

19 A. Yes.

20 Q. Okay.

21 A. The format you're taking about?

22 Q. Yes. Are you personally familiar with
23 Ms. Fischman's performance historically?

24 MS. GUERON: Objection.

25 A. In a general sense. In a general sense.

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2 Q. All right. So did there come a time
3 when Ms. Fischman was promoted from corporate
4 counsel to assistant general counsel?

5 A. Yes.

6 Q. Were you involved in any way in Ms.
7 Fischman's promotion?

8 A. No.

9 Q. Who was involved in Ms. Fischman's
10 promotion?

11 A. Donna.

12 Q. Was anyone else involved in Ms.
13 Fischman's promotion?

14 A. The president would approve or
15 disapprove.

16 Q. Generally speaking, can you describe for
17 me your duties and responsibilities as director
18 of HR during your tenure at MCHA?

19 A. Yes, I was responsible -- I really had a
20 two-fold role because MCHA was a services
21 organization. My one role was the HR individual
22 for MCHA as a company and in that role I was
23 responsible for the overall HR strategy as well
24 as the day-to-day tactical HR function since it
25 was a small organization.

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2 In the role that I performed for MCHA
3 services, that too was really kind of a dual
4 role. There was very much a role that was
5 focussed on the shared services that we provided,
6 that I spoke about previously; payroll, health
7 and welfare benefits and operating the 401(k)
8 plan.

9 And I have another role that was kind of
10 more broad-based and somewhat eclectic where I
11 was an HR -- excuse me, HR resource -- HR expert,
12 if you will -- HR expert resource to the
13 affiliated businesses in the US on any of the
14 issues that fell within the HR arena, be it
15 compensation, benefits, employee, relations,
16 reorgs and things of that nature. And in that
17 role also I would act as counselor and advisor to
18 the president of the businesses. And these
19 weren't all of the affiliated businesses in the
20 US, there was a select few that I work with in my
21 HR role as compared to some of the other
22 functions, they tended to be the smaller
23 businesses.

24 And so I worked with, you know, company
25 presidents, I worked with senior leaders in some

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2 of the organizations in regard to policy
3 interpretation, perhaps performance management
4 type of issues. In some cases I actually had to
5 fulfill an HR role in some of the smaller
6 organizations. For some of those organizations,
7 we actually went on to develop an HR function
8 within those business units.

9 But, generally, that was a broad brush
10 on the types of activities that I was involved in
11 and the counseling, the consulting, the advising
12 that I would provide to the business leaders, the
13 managers as well as employees.

14 Q. Have you completed your response?

15 A. Yes.

16 Q. Is it fair to say then that you were HR
17 generalist?

18 MS. PRIMAVERA: Objection.

19 A. Yes.

20 MR. BERMAN: Toni, if you can put this
21 exhibit away and pull up Plaintiff's
22 Exhibit 8, please.

23 I'll try to get through these relatively
24 quickly.

25 Let the record show that the witness is

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2 being shown an exhibit previously marked as
3 Plaintiff's Exhibit 8.

4 Q. Ms. Saunders, I'll give you the full
5 opportunity if you want to review the document.
6 I just want to really direct your attention to
7 the title information on the front page so that
8 you can see the period in question, the review
9 date and the job title at issue. And then to the
10 box that you indicated reflects the performance.
11 But if you want to look at any portion of this to
12 familiarize yourself, by all means. Is that
13 fair?

14 A. Sure.

15 MR. BERMAN: If you can scroll down a
16 little, Toni, so she can see the bottom
17 portion of the front page. And then when
18 Ms. Saunders is ready, we'll move to that
19 box showing the performance.

20 THE WITNESS: Ready.

21 Q. Ms. Saunders, obviously, if you want to
22 review any other portion of the document, you're
23 welcome to do so. But I would like to direct
24 your attention to the front of the document.

25 Is it correct this is Ms. Fischman's annual

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2 performance review covering the period calendar
3 year 2012 when she was employed as corporate
4 counsel?

5 A. Yes.

6 Q. Does this review reflect she exceeded
7 performance expectations?

8 A. Yes.

9 MR. BERMAN: We can set this exhibit
10 aside -- let's unless the witness needs to
11 look at any other portion for now.

12 Q. Is that okay, Ms. Saunders -- you're
13 comfortable?

14 A. Yes.

15 MR. BERMAN: Can you set this aside,
16 please, and pull up exhibit Plaintiff's
17 Exhibit 9.

18 Same process, if you can just, please,
19 scroll through so the witness can see the
20 documents and we'll come back to the first
21 page and to the chart.

22 Q. Again, Ms. Saunders, you're welcome to
23 review any other portion of this document, if it
24 will help you respond.

25 MR. BERMAN: Let the record reflect that

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2 Ms. Saunders is being shown an exhibit
3 previously marked as Plaintiff's Exhibit 9.

4 Q. Ms. Saunders, is this Ms. Fischman's
5 performance appraisal covering calendar year
6 2013?

7 A. Yes.

8 Q. This reflects her performance in the
9 role of assistant general counsel, correct?

10 A. Yes.

11 Q. Is it fair to say that her review
12 indicates that she exceeded performance
13 expectations from this annual review?

14 MS. PRIMAVERA: Objection?

15 Q. You can answer.

16 A. Yes, on the document that's what it
17 says.

18 Q. And this is the first review that she
19 would have received in her role as assistant
20 general counsel after being promoted, correct?

21 A. Yes.

22 MS. PRIMAVERA: Objection.

23 MR. BERMAN: We can set this one aside.

24 Now I would like to pull up Plaintiff's
25 Exhibit 10. Same process, scroll through so

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2 the witness can see the contents of the
3 documents.

4 THE WITNESS: Just hold here. I just
5 want to look at this. Okay.

6 Q. So scrolling to the front of the
7 document, does this comport with your
8 understanding that Ms. Fischman received a review
9 covering the period calendar year 2014 for her
10 work in connection with position of assistant
11 general counsel?

12 A. Yes.

13 Q. Does this review reflect that she
14 received and exceeds expectation score?

15 A. Yes, I believe I saw that as I was
16 scrolling through. Yes.

17 Q. Okay. If you can turn to the portion --
18 it's on the bottom of page stamped DEF000069.

19 On this page here you see the very last
20 sentence there, I am excited for my new role
21 leading the legal department and assuming the
22 lead of the compliance program this year. These
23 are huge responsibilities and I'm ready to take
24 them on, et cetera.

25 A. Yes.

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2 Q. Did you have any discussions with Ms.
3 Fischman about her taking on the role of
4 compliance?

5 A. Not that I recall. Again, I just want
6 to be clear, this was for performance for 2014?

7 Q. Right. And the review date is April 29,
8 2015?

9 A. Right.

10 Q. This is backward looking -- they are all
11 backward looking, right?

12 A. Yes.

13 MR. BERMAN: Let's set this aside. This
14 was Plaintiff's Exhibit 10. Let's pull up
15 plaintiff's 12?

16 Q. Let me know when you're ready?

17 A. Okay.

18 MR. BERMAN: Can you scroll to the top
19 please, Toni.

20 Let the record reflect the witness is
21 being shown a document that has previously
22 been marked as Plaintiff's Exhibit 12.

23 Q. Ms. Saunders, I'll direct your attention
24 to the employee title on the front page.

25 MR. BERMAN: Toni, can you scroll down a

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2 little so she can see that.

3 Q. Is this the review for Ms. Fischman
4 concerning her work in the role of acting general
5 counsel and chief compliance officer?

6 A. Yes.

7 Q. Okay. Now, at some point was Ms.
8 Fischman promoted to that role from the role of
9 assistant general counsel?

10 A. Yes.

11 Q. Were you part of that process of
12 having --

13 MR. BERMAN: Withdrawn.

14 Q. Were you part of the process to promote
15 Ms. Fischman?

16 A. I was involved in that, yes.

17 Q. What was your role in connection with
18 Ms. Fischman's promotion to acting general
19 counsel and chief compliance officer?

20 A. My role was the discussions with Donna
21 as she made a determination and decision in
22 regard to who she felt was a qualified candidate
23 for the role at the time. She knew it was likely
24 she would be promoted to the position of
25 president of MCHA and therefore her position

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2 would need to be filled.

3 Q. Let's turn to the time period of the
4 calendar year 2014. We're rewinding a little at
5 this point.

6 Is it fair to say that in 2014 MCHA was
7 undergoing some organizational changes?

8 MS. PRIMAVERA: Objection.

9 Q. Do you understand my question?

10 A. Yes, I understand the question. If MCHA
11 was potentially -- yes, they were undergoing some
12 organizational changes.

13 Q. Okay. So in 2014 who was the president
14 prior to Donna Costa becoming the president?

15 A. Shoji Yoshisato.

16 Q. Right. Did there come a time when MCHA
17 determined that Mr. Yoshisato was going to leave
18 the role of president?

19 A. Yes, at some point there was.

20 Q. How did you become aware of that?

21 A. I don't recall how I specifically became
22 aware of it.

23 Q. At some point MCHA placed Ms. Costa into
24 the role, correct, the role of president?

25 A. Ms. Costa was placed into the role but

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2 when you say MCHA placed her into that role, from
3 a decisionmaking standpoint, I'm not sure that's
4 entirely correct.

5 Q. Okay. Have you finished your response?

6 A. Yes.

7 Q. What do you know about how the decision
8 was made to have Ms. Costa take on the role of
9 president?

10 A. I know very little about that decision.

11 Q. Do you know who made the decision?

12 A. I do not.

13 Q. Do you know whether MCHC was involved in
14 the decision to select the president of MCHA?

15 A. Yes, I -- yes, I would assume MCHC was
16 involved in that decision.

17 Q. What is that assumption based on?

18 A. That the president's role reported back
19 to MCHC.

20 Q. Do you know whether Mr. Yoshisato was at
21 any point subject to an investigation concerning
22 allegations of sexual harassment?

23 A. I am aware he -- yes, I am aware of
24 that.

25 Q. Okay. And at a general level, what do

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2 you know about those allegations?

3 A. I don't know -- on a general level, just
4 that there were allegations made. And on a
5 general level they involved a former employee of
6 MCHA.

7 Q. Do you know whether those allegations
8 were investigated?

9 A. It's my understanding they were
10 investigated, yes.

11 Q. Do you know whether the allegations were
12 corroborated?

13 A. I don't have that knowledge.

14 Q. Do you know whether that transpired
15 prior to Mr. Yoshisato vacating the position of
16 president of MCHA?

17 A. As best as I can recall I think it did.

18 Q. Okay. Do you know when Mr. Yoshisato
19 vacated the position of president of MCHA,
20 whether he moved on to another role?

21 A. He returned to Japan.

22 Q. Do you know which entity he returned to
23 in Japan?

24 A. I don't recall.

25 Q. Do you know whether he went to work for

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2 MCHC?

3 A. I don't recall.

4 Q. Do you know whether he was a member of
5 the board of directors of MCHC?

6 MS. GUERON: Objection.

7 A. I don't recall. I don't know -- I
8 shouldn't say -- I don't know -- not that I don't
9 recall. I know he returned to Japan but I don't
10 know.

11 Q. When you first learned that Ms. Costa
12 was going to become the president of MCHA, did
13 you have any discussions with Ms. Costa
14 concerning succession planning?

15 A. Yes.

16 Q. What was the nature of those
17 discussions?

18 A. She sought my input and she often used
19 me as a sounding board for her thought process
20 during decisionmaking, including this.

21 Q. Did you have any opinion as to what
22 would be appropriate with respect to succession
23 planning in the wake of Ms. Costa's promotion?

24 A. I did not have an opinion, no.

25 Q. Did you have an opinion on the position

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2 of general counsel and chief compliance officer
3 should be filled?

4 A. Meaning what? Meaning internally,
5 externally?

6 Q. Well -- upon Ms. Costa's promotion from
7 general counsel and chief compliance officer to
8 president, that would leave a vacancy in the role
9 she vacated, correct?

10 A. Correct.

11 Q. Did you have any sense of what made
12 sense in terms of filling the position that was
13 being vacated?

14 MS. PRIMAVERA: Objection.

15 THE WITNESS: I'm sorry, can you repeat
16 the question. Did you ask me did I have any
17 opinion?

18 MR. BERMAN: Can you read it back,
19 please, Toni.

20 (Whereupon, the last question was read
21 back.)

22 A. Nothing in particular, no.

23 Q. Did you have a candidate in mind to take
24 on the role that was vacated by Ms. Costa?

25 A. A candidate in mind, no.

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2 Q. Did you speak with Ms. Costa about how
3 to fill that vacancy?

4 A. Yes.

5 Q. What did you say to her and what did she
6 say to you?

7 A. We talked about the candidate -- the
8 legal staff at the assistant GC level and who
9 might be potential -- you know, potential
10 candidates and discussed them and at the -- I
11 can't say at the same time -- during the course
12 of discussion, because we had a number of
13 discussions, we also discussed going externally
14 for candidates.

15 Q. Okay. Prior to Ms. Costa's promotion to
16 president have you previously discussed
17 succession planning within the legal department
18 with Ms. Costa?

19 A. Yes. Well, not in a formal sense but in
20 informal conversations.

21 Q. As part of those conversations, did she
22 express to you that she was interested in
23 becoming president?

24 A. I don't -- I don't recall a direct
25 expression of that.

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2 Q. In your discussions with Ms. Costa
3 concerning filling the vacancy that she was
4 leaving in that GC, general counsel, and chief
5 compliance officer role, how did you determine
6 whether to select an internal or external
7 candidate?

8 MS. PRIMAVERA: Objection.

9 A. From a budgetary standpoint, my
10 understanding is to is Japan from a budgetary
11 standpoint -- let me back up. The potential
12 recruiting costs to hire an external candidate
13 was an amount that Japan was not willing to pay
14 for.

15 Q. When you say "recruiting cost," are you
16 referring to like outside agencies that would
17 recruit for you or something different?

18 A. I believe -- yes. Not only the
19 recruiters costs but potentially the higher --
20 much higher and we didn't necessarily know but
21 potentially the overall cost, not only recruiter
22 cost but finding a candidate in the New York
23 marketplace, what that cost might be.

24 Q. So was Japan involved in the
25 determination of whether to seek an internal

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2 versus external candidate?

3 MS. PRIMAVERA: Objection.

4 A. Was Japan involved -- were they -- was
5 Japan involved in the decision whether to seek an
6 internal or external candidate? I would answer
7 indirectly, yes.

8 Q. With respect to the costs associated
9 with external recruitment, how would those be
10 paid?

11 MS. GUERON: Objection.

12 A. So I would like to back -- I'm sorry, I
13 would like to go back to prior question.

14 You asked me was Japan involved in the
15 decision to -- involved in whether we went
16 internally or externally?

17 Q. Correct.

18 A. My understanding is -- again, I'm not --
19 this is based on my discussions with Donna. I
20 don't have -- I didn't have direct conversations
21 with Japan. My understanding is Japan was
22 focussed on appointing Jennifer to the position,
23 not looking externally.

24 Q. Okay. Have you completed your response?

25 A. Yes.

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2 Q. Okay. At what point -- how did it come
3 about that Japan identified Ms. Fischman as their
4 preferred candidate?

5 MS. GUERON: Objection.

6 A. I don't know the answer to that.

7 Q. Do you know how the determination to
8 select Ms. Fischman for the general counsel --
9 the acting general counsel and chief compliance
10 officer role took place?

11 A. Yes.

12 Q. How was Ms. Fischman selected for the
13 role?

14 MS. GUERON: Objection.

15 A. Donna was instructed or MCHA was
16 instructed to appoint Jennifer to that role.

17 Q. Do you know how the decision was made to
18 select Jennifer?

19 A. The internal legal staff of the
20 assistant general counsel early on were reviewed
21 and Donna and I had some discussions. Jennifer
22 was the most likely candidate for the replacement
23 of Donna in the general counsel role and Donna
24 and, obviously, the president Yoshisato San had
25 several conversations about that and

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2 recommendation to Japan was not that Jennifer was
3 not qualified for the position of general counsel
4 and the recommendation was -- that was my
5 understanding of the recommendation made to
6 Japan.

7 Q. Have you completed your response?

8 A. Yes.

9 Q. Okay. So you had discussions with Donna
10 concerning the encumbrance in the assistant
11 general counsel position with respect to whether
12 it made sense to promote them to the general
13 counsel and chief compliance role; is that
14 correct?

15 A. Yes.

16 MS. PRIMAVERA: Objection.

17 Q. During your tenure with the company you
18 took notes in notebooks, right?

19 A. Yes.

20 Q. And your notes were extensive, correct?

21 MS. PRIMAVERA: Objection.

22 A. I did my best to take notes -- detailed
23 notes.

24 Q. Was it your general practice to take
25 notes concerning important conversations that you

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2 had concerning MCHA?

3 A. That was my general practice, yes.

4 Q. Did you take any notes concerning the
5 identification of candidates to succeed Ms. Costa
6 in the general counsel and chief compliance
7 officer role?

8 A. As best as I can recall, I believe my
9 notes reflect more of the conversations that
10 Donna and I had with regard to Jennifer because
11 at that point -- again, she was the selected
12 individual out of the three -- there were three
13 assistant GC's at the time.

14 Q. Okay. So did you and Ms. Costa discuss
15 the criteria for a successful candidate into the
16 general counsel and chief compliance officer
17 position?

18 A. Not in those terms, no.

19 Q. What did you discuss with regard to how
20 to select a candidate?

21 A. Again, we discussed the individuals and
22 focussing again in on Jennifer what were the pros
23 as well as the cons related to Jennifer as
24 applied to the role.

25 Q. Okay. Have you completed your response?

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2 A. Yes.

3 Q. So correct me if I'm wrong, you
4 mentioned that there were three candidates at the
5 AGC, assistant general counsel, level, correct?

6 A. Yes.

7 Q. That would be Jennifer Fischman?

8 A. Yes.

9 Q. That would be Andy Caezar?

10 A. Yes.

11 Q. And who was the third one?

12 A. Kathryn Roche.

13 Q. So let's just go through them in order,
14 is that okay?

15 A. Uh-huh.

16 Q. Starting with Andy Caezar, what were the
17 pros and cons with of selecting Mr. Caezar?

18 A. I believe at the time it was -- he was
19 not viewed as a -- he was viewed more of a
20 specialized in pharmacy, so not as broad of a
21 background and not as strong of a -- he was more
22 of an individual contributor type and did not
23 necessarily have a more broad based skills for
24 the role.

25 Q. Have you complete your response?

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2 A. Yes.

3 Q. What about Ms. Roche?

4 A. Ms. Roche actually for her own choice,
5 on work family reasons, she was an 80 percent
6 position and was not interested in the next level
7 up role.

8 Q. When you say 80 percent position, is
9 that part-time; what does that mean?

10 A. Yes, essentially.

11 Q. What were the pros and cons of Ms.
12 Fischman?

13 A. The pros on Jennifer were that she knew
14 the organization. Donna felt she was -- had
15 legally technically competent skills and what
16 wasn't, would be developed.

17 In terms of the cons, it focussed on the
18 fact that Jennifer was an individual who was
19 difficult to work with at times. Jennifer had a
20 style and characteristic -- excuse me, a style
21 and personality type of characteristics that both
22 peers or business affiliates felt at times were
23 difficult to deal with. Donna felt that, again,
24 Jennifer had issues in communicating -- the
25 communication between Donna and Jennifer was

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2 difficult at times. Jennifer tended to be
3 difficult to coach and mentor because she had a
4 tendency to feel that she needed to have ready
5 answers or had all the ready answers. So
6 sometimes she would become defensive in dialogue
7 and that made it difficult for Donna to coach her
8 and lead to better decisionmaking, whatever it
9 was they were talking about.

10 There are also concerns on Donna's part
11 about Jennifer stylistically. She -- in the
12 general counsel role, you would be working with a
13 much higher level of Japanese executive level.
14 Jennifer did work, of course, with Japanese in
15 US. But at a more executive level, Jennifer's,
16 again, style, personality, tended to be very
17 loud, unfiltered at times. The Japanese tend to
18 be very reserved -- from a cultural standpoint
19 reserved, hierarchical. You would differ to the
20 senior Japanese person in a position. Jennifer's
21 style was the opposite of that. So that would
22 have required definitely some coaching for
23 Jennifer but that presented concern to Donna in
24 that regard. And Donna was concerned, again, of
25 the role of general counsel for MCHA, MCHA being

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2 an organization overall that provided the
3 services to the business affiliates. Jennifer
4 had some difficult relationships, had some -- a
5 representation among the business affiliates that
6 was of concern to Donna if she were appointed to
7 the role.

8 And then I think the last thing I would
9 say is Jennifer didn't have direct managerial
10 skills for managing people and the peers --
11 Jennifer's peers within the legal department also
12 had difficulty with Jennifer and there was the
13 concern that if we appointed her to the general
14 counsel role would people leave from the legal
15 department.

16 Q. Have you completed your response?

17 A. Yes.

18 Q. With respect to the last thing you
19 mentioned, the concern about whether people would
20 leave the legal department. Are you referring to
21 anyone specifically?

22 A. No -- no.

23 Q. So would you include Kelli Troccoli
24 within that category?

25 A. Of people who might leave?

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2 Q. Yes.

3 A. Potentially, yes.

4 Q. Well, at that point in time would you
5 characterize Jennifer and Kelli Troccoli --
6 Jennifer Fischman and Kelli Troccoli as having a
7 positive workplace relationship?

8 A. No.

9 Q. So wasn't she someone that you would
10 consider in that category then?

11 MS. PRIMAVERA: Objection.

12 Q. Or if not, why not?

13 A. If Jennifer were appointed to general
14 counsel, might Kelli leave? That's the question,
15 correct?

16 Q. Well, let me preface this by saying
17 in asking what the pros and cons were of each of
18 the candidates, we went one by one and you
19 started telling me the pros and cons with respect
20 to Ms. Fischman in concerning her for the general
21 counsel and chief compliance role.

22 And one of the potential cons that you've
23 identified was her relationships with her peers
24 and the consideration that if she was approved
25 for the role some members of the legal department

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2 could potentially leave. Do you recall telling
3 me that?

4 A. Uh-huh.

5 Q. So I'm asking you whether the people who
6 might leave included Ms. Troccoli?

7 A. Potentially, yes.

8 Q. Who else would it include?

9 A. There was an attorney, Jordan Elbaum,
10 who had been hired -- I don't recall exactly when
11 and he was a high performer, young, he was, I
12 believe, corporate counsel. And there was a
13 concern that potentially Jordan might leave too.

14 Q. Have you completed your response?

15 A. Yes.

16 Q. Anyone else besides Ms. Troccoli and
17 Mr. Elbaum that you were concerned might leave?

18 A. In the general sense, again, I think
19 there was a concern for everyone in the legal
20 department. The concern I would describe as
21 grayer with perhaps the newer attorneys in the
22 department such as Jordan, Joe. There was also a
23 sense that Andy might have difficulty with
24 Jennifer in the general counsel role.

25 Q. Andy was --

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2 MR. BERMAN: Withdrawn.

3 Q. Did you complete your response?

4 A. Yes. Yes. That there might be, you
5 know, a concern for Andy.

6 Q. Have you completed your response?

7 A. Yes.

8 Q. Well, Andy wanted the position for
9 himself, didn't he?

10 MS. PRIMAVERA: Objection?

11 MS. GUERON: Objection.

12 A. Yes.

13 Q. And you had discussions with him where
14 he expressed that desire to do you, correct?

15 MS. PRIMAVERA: Objection.

16 A. I don't recall discussions with Andy on
17 -- no -- no. I don't recall, no.

18 Q. We'll get into that in a little more
19 detail later.

20 A. Okay.

21 Q. So with respect to these candidates you
22 now expressed to me the pros and cons of each of
23 their respective individuals.

24 Is there anything else that you haven't
25 mentioned about considering their pros and cons?

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2 A. No.

3 Q. Okay. So you mentioned a recommendation
4 made to Japan that Jennifer be selected, did I
5 get that right?

6 MS. PRIMAVERA: Objection.

7 MS. GUERON: Objection.

8 A. There was not a recommendation made to
9 Japan that Jennifer be selected -- Jennifer be
10 appointed general counsel, no.

11 Q. Okay. Where is the disconnect here? I
12 tell you thought me told me Ms. Costa and Mr.
13 Yoshisato discussed a recommendation to Japan in
14 terms of identifying a candidate for the
15 position. Did I get that right?

16 A. They had discussions about the
17 candidates. The recommendation was to go outside
18 to look for a candidate because there was not an
19 internal candidate that was qualified for the
20 position -- that they would recommend as
21 qualified for the position.

22 Q. Have you complete your response?

23 A. Yes.

24 Q. Okay. The recommendation to seek an
25 external candidate was declined, correct?

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2 A. Yes.

3 Q. Okay. So taking external candidates off
4 the table, you're left with three internal
5 candidates, right?

6 A. Yes.

7 Q. So with respect to those three internal
8 candidates, what was the resulting
9 recommendation?

10 MS. GUERON: Objection.

11 A. I guess -- there was not a
12 recommendation of Jennifer in the sense that we
13 -- the -- Donna and Yoshisato San were not
14 recommending an internal candidate. And at some
15 point Japan came back and said, you know, we're
16 not approved going externally and Jennifer of the
17 three was the only identified candidate and so
18 they -- so Japan instructed MCHA to appoint
19 Jennifer.

20 Q. Okay. Have you completed your response?

21 A. Yes.

22 Q. When you say "Japan," are you referring
23 to MCHC?

24 A. Yes.

25 Q. So when Jennifer was selected, was there

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2 a discussion of what the title would be?

3 A. A discussion by who?

4 Q. Let's go about it a different way, okay?

5 When Jennifer was ultimately selected for the
6 promotion, she was promoted to the position of
7 acting general counsel and chief compliance
8 officer, correct?

9 A. Correct.

10 Q. So there's a distinction between the
11 acting title and the full title, correct?

12 A. Correct.

13 Q. Okay. In your view, what's the
14 distinction?

15 A. The distinction was that in the absence
16 of feeling Jennifer was qualified
17 and recommended -- you know, was qualified for
18 the position but we were being instructed to
19 appoint Jennifer to the position to -- I'm not
20 expressing myself well. I'm sorry.

21 The conversation about that title
22 focussed on the fact that developmentally Donna
23 did not feel Jennifer was qualified for the
24 position. So it was to address the fact that she
25 was being instructed to appoint her to the

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2 position but that there was still concerns and
3 developmental needs that were there in order for
4 her to be able to be considered fully qualified
5 in the general counsel role.

6 Q. Have you finished your response?

7 A. Yes.

8 Q. Okay. What were the qualifications for
9 the full position of general counsel and chief
10 compliance officer?

11 A. Someone who could handle broad-based --
12 the number of broad-based duties without falling
13 through the cracks.

14 Someone who can interact successfully
15 with management in Japan.

16 Someone who can technically handle the
17 legal matters for the department.

18 Someone who had the trust of the
19 business affiliates they were supporting.

20 Q. Have you completed your response?

21 A. Yes.

22 Q. Okay. Any other qualifications than
23 those four that you just identified?

24 A. I'm -- when you're asking me the
25 qualifications, I'm not -- as HR I cannot

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2 determine the legal, technical qualifications of
3 the individual overall. The types of things that
4 I've been explaining to you are more of the soft
5 type of qualifications that I know go into a
6 leadership role that I know were discussed
7 between Donna and I as we assessed and that are
8 important to the success of an individual in that
9 role.

10 Q. Have you completed your response?

11 A. Yes.

12 Q. I want to draw a distinction because you
13 used the term "individual."

14 I'm talking about the role of general counsel
15 and chief compliance officer.

16 So within an HR framework, right, isn't it
17 fair to say that whether or not you're a lawyer,
18 you can articulate what the requirements are for
19 the position, right?

20 MS. PRIMAVERA: Objection.

21 MS. GUERON: Objection also.

22 MS. PRIMAVERA: Can you read that back.

23 (Whereupon, last question was read
24 back.)

25 MS. PRIMAVERA: I want to make sure has

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2 my objection.

3 MR. BERMAN: I'm withdrawing the
4 question.

5 MS. PRIMAVERA: I'm sorry, there's a
6 delay.

7 MR. BERMAN: I'll rephrase the question
8 and I'll give you an opportunity to object
9 again.

10 Q. Ms. Saunders --

11 A. Yes.

12 Q. -- I want to draw a distinction with you
13 between the position itself and its
14 characteristics and the characteristics of the
15 individuals that you just discussed you
16 considered.

17 So with that distinction in mind, I'm asking
18 you about the role, right?

19 What are the characteristics of the role,
20 what are the requirements of the role, what are
21 duties app responsibility of the role?

22 These are things that as an HR instructor are
23 within your scope, correct?

24 MS. PRIMAVERA: Objection.

25 MS. GUERON: Objection.

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2 A. I don't determine what makes a qualified
3 GC.

4 Q. Have you completed your answer?

5 A. Yes.

6 Q. I'm not asking you who chooses the
7 qualifications. I'm asking what the
8 qualifications are for the position.

9 Do you understand the difference?

10 MS. PRIMAVERA: Objection.

11 Q. Would it help if I give you an example?

12 A. I think the examples are written on the
13 job description.

14 Q. Okay. So does that help you -- if you
15 refer to the job description, does that help you
16 tell me what the qualifications for the position
17 are?

18 MS. GUERON: Objection.

19 A. They would be the qualifications that
20 are written on the page.

21 Q. Thank you. So that job description
22 would tell me what the qualifications are for the
23 full general counsel and chief compliance officer
24 position, correct?

25 MS. PRIMAVERA: Objection.

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2 A. I don't know that saying it's the full
3 qualifications is accurate.

4 Q. Can we agree that the job description is
5 a starting point for the qualifications for the
6 position?

7 A. Yes.

8 MS. GUERON: Objection.

9 Q. Can we agree that the job description is
10 a starting point for the qualifications of the
11 position?

12 MS. PRIMAVERA: Objection.

13 Q. You can answer.

14 A. Yes.

15 Q. Okay. So what else beyond the job
16 description would one need to know to determine
17 the qualifications for the position?

18 MS. PRIMAVERA: Objection.

19 MS. GUERON: Objection.

20 Q. You can answer the question unless
21 instructed not to.

22 A. As we said, it's a starting point but
23 it's not all of the factors that go into
24 determining if someone is qualified for the
25 position.

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2 Q. Okay. So what else would you need to
3 make that determination?

4 MS. PRIMAVERA: Objection.

5 MS. GUERON: Objection.

6 A. Any knowledge that you may have of a
7 candidate that makes you question is the person
8 the right fit in the job. Again, based on the
9 fundamental qualifications but is it a right fit
10 in the organization also.

11 Q. When you use the phrase fundamental
12 qualifications, are you referring to the position
13 profile or something different?

14 A. No, it would be the position profile.

15 Q. Okay. When you were considering
16 candidates for the general counsel and chief
17 compliance officer position, you had discussions
18 with Ms. Costa, right?

19 A. Yes.

20 MS. GUERON: Objection.

21 Q. As part of those conversations, did you
22 discuss Ms. Costa's own qualifications when she
23 first assumed that role?

24 A. Not that I recall.

25 Q. Do you know what Ms. Costa's own

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2 qualifications for the position were when she
3 first inherited it or joined that title --
4 whatever you want to call it?

5 A. No.

6 Q. Okay. Do you know Ms. Costa's
7 professional background?

8 A. In general terms.

9 Q. Do you know how much legal experience
10 she had before she became general counsel of
11 MCHA?

12 A. I do not.

13 Q. Do you know whether Ms. Fischman had
14 more or less legal experience than Ms. Costa had
15 at the time Ms. Costa first assumed the role of
16 general counsel and chief compliance officer?

17 MS. PRIMAVERA: Objection.

18 A. I do not.

19 Q. Now, you mentioned that Ms. Costa and
20 Mr. Yoshisato had conversations about the
21 selection of candidates, correct?

22 A. Yes.

23 Q. How do you know they had those
24 conversations?

25 A. Just through casual knowledge, either

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2 Donna would have said to me she was having a
3 meeting with Yoshisato San.

4 Q. Ms. Fischman is ultimately selected as
5 acting general counsel. Who made the decision
6 that she would be acting general counsel rather
7 than general counsel and chief compliance
8 officer?

9 MS. PRIMAVERA: Objection.

10 A. I don't know who made that decision.

11 Q. Did you make the decision?

12 A. Did I?

13 Q. Yes.

14 A. I didn't make that decision, no.

15 Q. When was the first time that you heard
16 the role being referred to as an acting position
17 rather than a full position?

18 A. I don't recall when.

19 Q. Was it your idea?

20 A. Was it my idea that -- was it my idea --
21 was what my idea?

22 Q. Was it your idea to select Jennifer for
23 the -- Ms. Fischman -- for the acting general
24 counsel and chief compliance officer rather than
25 for the full position of general counsel and

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2 chief compliance officer?

3 MS. GUERON: Objection.

4 A. I was not a decisionmaker in selecting
5 Jennifer.

6 Q. Who came up with the concept of having
7 an acting general counsel and chief compliance
8 officer role rather than a full general counsel
9 and chief compliance role?

10 MS. PRIMAVERA: Objection.

11 MS. GUERON: Objection.

12 A. I recall having a discussion with Donna
13 and -- I don't recall who came up with the
14 concept but I do recall titles other than full
15 general counsel having what might be a title
16 other than general counsel -- other than the
17 general counsel.

18 Q. What other titles were discussed?

19 A. Acting general counsel -- I don't recall
20 beyond acting general counsel.

21 Q. So there were other titles but you can't
22 recall what they were?

23 MS. PRIMAVERA: Objection.

24 Q. Did I get that right?

25 A. Were there other titles? Meaning -- no,

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2 I don't recall what other titles.

3 Q. But you recall that there were other
4 titles that were considered?

5 MS. PRIMAVERA: Objection.

6 Q. Isn't that what you just told me or did
7 I get that wrong?

8 A. Well, no, I mean -- would there be
9 another, you know -- yes, there was some
10 discussion or thought given to another title but
11 what other options -- specific options, I don't
12 recall what other specific options that may
13 have -- we may have discussed or I may have
14 suggested, you know, Donna asked me for, you
15 know, input on that. I don't recall.

16 Q. Okay. So was there any discussion of
17 how long Ms. Fischman would be in the role of
18 acting general counsel and chief compliance
19 officer?

20 MS. GUERON: Objection.

21 A. Yes.

22 Q. What was the discussion? What did you
23 say and what did Ms. Costa say?

24 A. I don't recall the details but the
25 general -- my general understanding is that it

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2 would be for a one year period.

3 Q. And in -- as part of that discussion,
4 what was to happen at the end of the year?

5 A. That she would be promoted to the full
6 GC position.

7 Q. Okay. And how would the decision to
8 promote her to the full GC position be
9 determined?

10 A. Based on her performance during the
11 year.

12 Q. Okay. When did you have this discussion
13 with Ms. Costa?

14 A. Prior to Jennifer's appointment.

15 Q. Can you be anymore specific than that?

16 A. I don't -- I don't remember
17 specifically.

18 Q. Do you know when Ms. Fischman was
19 promoted?

20 A. She was notified in December of 2014.

21 Q. When did the decision take effect?

22 A. April 1st of 2015.

23 Q. So if Ms. Fischman was notified in
24 December then presumably your discussion with Ms.
25 Costa was sometime prior to December of 2014,

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2 correct?

3 A. Yes.

4 Q. Do you know how much time elapsed from
5 your discussions to the time when Ms. Fischman
6 was notified?

7 A. I don't know exactly, no.

8 Q. Well, these organizational changes that
9 were taken place, you became aware of them at the
10 beginning of 2014, right?

11 MS. PRIMAVERA: Objection.

12 A. I don't recall that it was as early as
13 the beginning of 2014.

14 MR. BERMAN: Why don't we take a break
15 here and we can turn to that in more detail
16 after lunch, okay?

17 THE WITNESS: Okay.

18 MR. BERMAN: Thank you, all.

19 THE WITNESS: What's the period of time?

20 MR. BERMAN: We're going to break for
21 30 minutes. If you want more time, just let
22 me know.

23 THE WITNESS: No, I'm fine with that.

24 MR. BERMAN: Let's take 30 minutes.

25 (Whereupon, a luncheon recess was

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2 taken.)

3 Q. Ms. Saunders, we're back on the record.

4 You, of course, understand you're still under
5 oath.

6 Before we took our break we were talking
7 about the pros and cons of different candidates
8 that were considered for the acting general
9 counsel and regular full general counsel
10 position.

11 We talked about the pros and cons of Ms.
12 Fischman, you mentioning in connection with that
13 discussion that there were certain individuals
14 that you felt had difficulty with Ms. Fischman;
15 did I get that right?

16 A. Yes.

17 Q. You mentioned Jordan Elbaum as one of
18 the individuals that you were considered
19 concerned might leave the company if Ms. Fischman
20 was promoted; is that correct?

21 A. Yes.

22 Q. What was the factual basis for your
23 concern that Mr. Elbaum might leave the company
24 if Ms. Fischman was promoted?

25 A. It was just a general knowledge of

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2 working in an office with individuals and hearing
3 remarks or comments some, which would have been
4 third-hand in regard to what people felt or
5 thought of Jennifer.

6 Q. Were there any comments of that nature
7 made directly to you?

8 A. Yes.

9 Q. Who made those comments?

10 A. I would receive comments from Kelli
11 Troccoli and I would receive -- are you asking me
12 about direct comments?

13 Q. Are there -- yes, firsthand comments
14 that you --

15 A. Oh, firsthand comments. From Kelli
16 Troccoli and -- I don't recall any specific
17 firsthand comment from anyone else.

18 Q. So the only firsthand comments you
19 receive was from Ms. Troccoli; is that correct?

20 MS. PRIMAVERA: Objection.

21 A. That I can recall.

22 Q. Sitting here today, can you recall any
23 other individuals who made comments directly to
24 you concerning Ms. Fischman?

25 MS. GUERON: Objection.

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2 A. I would -- oh, from the legal
3 department? I can't recall the specific
4 comments, no.

5 Q. Okay. So did Mr. Elbaum ever come to
6 you with comments about Ms. Fischman and having
7 difficulty with her?

8 A. No.

9 Q. We looked at Ms. Fischman's performance
10 reviews for the period leading up to and through
11 her promotion, none of them have reference to any
12 comments about her being difficult to work with,
13 are you aware of that?

14 MS. PRIMAVERA: Objection?

15 A. From reviewing performance reviews, yes.

16 Q. And are you aware of any instances
17 outside of these performance reviews prior to Ms.
18 Fischman's promotion she was counseled about any
19 communication issues or difficulties with
20 personal interactions?

21 A. Yes.

22 Q. What can you tell me about those?

23 A. About her difficulties?

24 Q. About her being counseled.

25 A. Oh, about her being counseled --

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2 Q. Yes.

3 A. -- from difficulties?

4 Q. And, again, we're talking about the
5 period prior to her becoming promoted to acting
6 general counsel?

7 A. I am -- I'm sorry, just please repeat
8 the question.

9 Q. I'll try it a different way.

10 A. Okay.

11 Q. Prior to April 1st of 2015, right, which
12 is the date when Ms. Fischman's promotion became
13 effective, right?

14 A. Right, yes.

15 Q. Prior to that point have you ever
16 counseled Ms. Fischman concerning her
17 performance?

18 A. I don't recall specific times that I
19 counseled Jennifer, no.

20 Q. Did you ever counsel Ms. Fischman
21 concerning her performance as a member of the
22 legal department?

23 A. Again, it may have been more on an
24 informal basis where knowing of a certain issue
25 in conversation, trying to suggest a way to be

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2 softer, not as -- to be softer, less
3 intimidating.

4 For example, sometimes when we would
5 deal with employee issues, and they could be
6 outside of MCHA, and I would consult with
7 Jennifer she, at times, would react kind of --
8 she would react more shoot from the hip or
9 more -- react more emotionally to the situation.
10 And I would say to her, you know, let's just step
11 back and calm down and, you know, review what the
12 facts were.

13 So, you know, did I ever counsel and try
14 to assist her in those type of things, yes.

15 Q. Have you completed your response?

16 A. Yes.

17 Q. Those interactions you just described to
18 me, are those pertaining to her relationship with
19 Ms. Troccoli?

20 A. No.

21 Q. What are they pertaining to?

22 A. Not that particular -- no, I was talking
23 more about, you know, when I would go to her with
24 a particular -- like, employment -- employment
25 relations or an performance issue that was occur

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2 in the field and explaining the situation and
3 getting more of a -- more of an emotional or
4 expressive result from Jennifer and -- or if we
5 were discussing a remedy or what might be an
6 appropriate action, I would counsel her at times
7 to think more -- less emotionally, react less
8 emotionally, let's think about this more
9 objectively.

10 Q. Are you describing interactions other
11 people are having in field that you're reporting
12 to her in connection with her legal duties?

13 MS. PRIMAVERA: Objection.

14 A. Jennifer -- I would be aware, HR
15 managers or the people that I dealt with in the
16 businesses in my function, I would work with them
17 on employee situations, whether they be
18 performance issues or things like that and I
19 would work in tandem with Jennifer as in the
20 legal department to -- you know, on the situation
21 to make sure we were handling things
22 appropriately or what the facts were and what
23 might be the appropriate course of action to
24 advice the business.

25 Q. Have you completed your response?

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2 A. Yes.

3 Q. Let me try this a different way okay. I
4 am asking you about conveying to Ms. Fischman
5 that her performance was negative in a verbal
6 manner; have you ever done that?

7 MS. PRIMAVERA: Objection.

8 MS. GUERON: Objection.

9 Q. Do you understand my question?

10 A. Did I ever -- when you say in a "verbal
11 manner" --

12 Q. As an HR professional, right --

13 A. Right.

14 Q. -- part of your job duties is to
15 interact with employees concerning their
16 performance, correct?

17 A. Correct.

18 Q. And there are different methods through
19 which you can achieve that, correct?

20 A. Correct.

21 Q. So, for example, you can issue them a
22 document, which informs them of their
23 performance, correct?

24 A. Correct.

25 Q. And you can also import that information

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2 to them verbally, correct?

3 A. Yes.

4 Q. Did you ever import to Ms. Fischman
5 prior to her promotion that she had negative
6 performance in connection with inter-peer
7 communication?

8 MS. PRIMAVERA: Objection.

9 Q. Do you understand my question?

10 A. I do. No, not that I recall.

11 Q. Do you have any notes or memorandum
12 reflecting conveying to Ms. Fischman any form of
13 negative performance, other than what might be
14 contained within a written performance appraisal?

15 MS. PRIMAVERA: Objection.

16 A. I mean, that's very -- that's a very
17 broad question. So, you know, if the bottom line
18 of the question that you're asking me is
19 counseling her on her performance, the answer
20 would be no.

21 Q. Okay. Is there any written document
22 that you're aware of that reflects that any other
23 employee in the legal department, other than
24 Kelli Troccoli, had any interpersonal
25 difficulties with Ms. Fischman prior to her

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2 promotion?

3 A. No, no that I -- no. No.

4 Q. Did Mr. Elbaum ever make a complaint
5 about Ms. Fischman?

6 A. No, not to me.

7 Q. Are you aware of any complaint
8 Mr. Elbaum made to anyone about Ms. Fischman?

9 A. What do you mean by complaint?

10 Q. Well, you had discussed in the
11 consideration of Ms. Fischman's pros and cons
12 that one of the cons identified was that peers
13 purportedly had difficulty working with her,
14 correct?

15 A. Uh-huh.

16 Q. What I'm asking now is you had
17 mentioned Mr. Elbaum in connection with that
18 conversation. I'm asking if he made any
19 complaints, right, and you said not directly to
20 me.

21 A. Uh-huh.

22 Q. Now I'm asking are you aware of any
23 other complaint he made about Ms. Fischman?

24 A. Again, just what I would have heard
25 third sense that's -- other than hearing

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2 something third-party in that regard, no.

3 Q. Okay. Have you complete your response?

4 A. Yes.

5 Q. Okay. If you heard a second or third
6 hand complaint about one of the attorneys in the
7 legal department, wouldn't you have investigated
8 it?

9 MS. PRIMAVERA: Objection.

10 MS. GUERON: Objection.

11 A. About someone being difficult to work
12 with?

13 Q. Yes.

14 A. That depends on what I heard or how
15 frequently I heard.

16 Q. Would you have memorialized such a
17 complaint?

18 A. No, not necessarily something like that.

19 Q. Okay.

20 MR. BERMAN: Let's pull up Plaintiff's
21 Exhibit 5 again, please.

22 Q. Ms. Saunders, I would like you to take a
23 moment or however long you need to review this
24 position profile for general counsel and chief
25 compliance officer with the following question

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2 question in mind, are there any qualifications
3 for this position that you contend that Ms.
4 Fischman did not have at the time of her
5 promotion?

6 MS. PRIMAVERA: Objection.

7 MS. GUERON: Objection.

8 MR. BERMAN: You can direct the court
9 reporter as needed.

10 THE WITNESS: Okay. I see a couple of
11 things, yes.

12 Q. Are you ready to provide your response?

13 A. Yes.

14 Q. Go ahead.

15 A. Strong interpersonal skills and
16 emotional intelligence.

17 Q. Any others?

18 A. Leadership skills.

19 Q. Any others?

20 A. Ability to collaborate effectively with
21 business people and outside counsel.

22 Q. Any others?

23 A. No.

24 Q. Prior to Ms. Fischman's promotion did
25 you have any complaints from -- what was it --

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2 what did you call it, outside business people --
3 business people and outside counsel, did you have
4 any complaints about Ms. Fischman from them?

5 A. From my interactions with some of the
6 affiliates they felt that there were, at times,
7 feelings of when they had to deal with Jennifer
8 that they were intimidated by her style, the way
9 she went to speak to them, the -- yes.

10 Q. Have you completed your response?

11 A. (No verbal response.)

12 Q. I asked you if there were any complaints
13 from business people and outside counsel.

14 A. So you're asking for complaints? I'm
15 referring more to feedback that I would receive
16 in my daily interactions working with another --
17 either HR manager or a Japanese expat president,
18 where the -- what was conveyed to me is that they
19 weren't comfortable working with Jennifer because
20 of her stylistic attributes I've just been
21 referring to.

22 Q. Have you completed your response?

23 A. Yes.

24 Q. Which HR managers you are you referring
25 to that provided you with the feedback concerning

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2 Ms. Fischman?

3 A. There was an HR manager from an
4 affiliate -- one of the business affiliates.

5 THE WITNESS: Am I required to give the
6 name here, Brittany?

7 MS. PRIMAVERA: You can answer the
8 question -- Pat, unless instructed not to
9 answer, you should respond to the question.

10 THE WITNESS: Okay. Thank you.

11 MS. PRIMAVERA: If you want to take a
12 very brief one minute break, you can. But
13 unless instructed, you should respond.

14 MR. BERMAN: Just to be clear, I don't
15 -- if you want a break between questions,
16 you can take a break between questions. You
17 can't take a break to consult with your
18 attorney concerning a question that's
19 pending.

20 Just to be clear about the instructions,
21 you're here to testify under oath as a fact
22 witness. I'm not asking you about any
23 privileged communications you had with your
24 attorney. So other than confessing to a
25 crime or something like that, I expect you

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2 to respond to the questions.

3 MS. PRIMAVERA: I appreciate that. I
4 meant more so if she needs a break for
5 herself to assess -- I don't know what her
6 concern is in regard to your question but
7 before she -- if she has a concern about
8 consulting with her attorneys, we understand
9 the rule of the day.

10 MR. BERMAN: And just for the witness'
11 benefit, if there's anything that you're
12 concerned is confidential, just tell us and
13 we can mark the transcript confidential if
14 it's pertaining to personal information of
15 somebody. We have a confidentiality order
16 in the case.

17 THE WITNESS: Okay.

18 A. So the company was Mytex and the HR
19 individual there is Chris -- I'm sorry, again,
20 I've very been retired a few years -- Chris. I
21 recall a situation -- there's a company in
22 Virginia, MPCA -- I'm sorry, under the reorg that
23 occurred about a year before I left, it's
24 probably MCCA right now -- Mitsubishi Chemical
25 Composites America -- and it was a Japanese expat

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2 president there at the time. There was a
3 situation where they wanted some sensitivity
4 training among their employees. I suggested
5 Jennifer can do the training and I received a
6 negative reaction in that regard.

7 Q. Have you completed your response?

8 A. Yes.

9 Q. With respect to this situation with
10 Mytex with Chris, what did that pertain to?

11 MS. PRIMAVERA: Pat, before you
12 answer -- Matt, can we mark this whole line
13 of questioning confidential in the
14 transcript?

15 MR. BERMAN: Yes, we can.

16 MS. PRIMAVERA: I think we're getting
17 into specifics with clients and I'm
18 concerned about various privilege issues.

19 MR. BERMAN: Well, we're not discussing
20 the substance of any client matters, we're
21 just discussing any complaints about Ms.
22 Fischman's demeanor. We can mark it
23 confidential.

24 MS. PRIMAVERA: In turn, it's
25 implicating specific matters that were being

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2 dealt with to get there -- to why there were
3 complaints about Jennifer.

4 MR. BERMAN: Why don't we mark the
5 portion of the transcript confidential and
6 we can admonish the witness not to reveal
7 the substantive nature of the client matter
8 but just the substance of whatever complaint
9 was made about Ms. Fischman; does that work
10 for you?

11 MS. PRIMAVERA: That would be great.
12 Thank you.

13 Q. With that understanding, Ms. Saunders,
14 can you provide any additional detail about the
15 complaints made from Chris at Mytex?

16 A. I dealt with Chris and Jennifer dealt
17 with Mytex over a number year period and, you
18 know, a specific -- a specific situation I don't
19 necessarily recall. I just know that in the
20 multiple various employee type of issues that
21 would arise that we would discuss, he, you know,
22 I can receive a call from Chris and discuss it
23 and I would say, you know, you really should
24 discuss that with Jennifer and I would get a
25 response I was afraid you were going to say that.

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2 And just knowing, you know, from having a
3 relationship with Chris that dealing with
4 Jennifer at times can have certain challenges to
5 it.

6 Q. Have you completed your response?

7 A. I know also from Chris that the expat
8 president of Mytex -- excuse me, Arai, A-R-A-I,
9 hearing third-hand through Chris that at times
10 they were not comfortable -- necessarily
11 comfortable work being Jennifer.

12 Q. Have you completed your response?

13 A. Yes.

14 Q. Do you know who Deborah Westerholt was?

15 A. Yes.

16 Q. Wasn't Deborah Westerholt the HR
17 director at Mytex?

18 A. She was the for a period of time, yes.

19 Q. So does that refresh your recollection
20 as to the last name of Chris?

21 A. Greeley.

22 Q. Were either of these reports of
23 interpersonal issues conveyed to Ms. Fischman at
24 any time during her tenure?

25 A. Not to my knowledge.

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2 Q. Is if you deemed them to be significant,
3 would that have made their way into her
4 performance reviews?

5 MS. PRIMAVERA: Objection.

6 A. Again, performance reviews are done by
7 the business, not by HR.

8 Q. Okay. So HR doesn't have a role in
9 documenting performance?

10 MS. PRIMAVERA: Objection.

11 MS. GUERON: Objection.

12 Q. You can respond.

13 A. HR does not have a role -- HR does not
14 complete a performance evaluations. HR -- yeah,
15 HR does not complete the performance evaluations.

16 Q. Are you aware that Mr. Arai had a sexual
17 harassment allegation lodged against him?

18 A. No, I am not.

19 Q. Let's move on here.

20 MR. BERMAN: You can put this exhibit
21 away, please.

22 Q. Ms. Saunders this exhibit, DEF002520, is
23 a selection of pages that were produced to us
24 from MCHA from notebooks. So I don't want to
25 represent to you that this is one particular

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2 document, rather this is excerpts from various
3 notebooks that were provided to us. Are you with
4 me so far?

5 A. Yes.

6 Q. So there's 130 pages in the exhibit --
7 I'm not going to ask you to read the whole thing,
8 obviously, right now.

9 MR. BERMAN: If you could, just direct
10 the court reporter to scroll through the
11 document to your satisfaction, such that you
12 can tell me what these documents are or
13 identify them for me somehow, if possible.

14 THE WITNESS: Okay.

15 MR. BERMAN: Or, alternatively, can you
16 confirm for me that these are excerpts from
17 notebooks that you created.

18 THE WITNESS: Yes, I can confirm that.

19 MR. BERMAN: Take a moment with the
20 court reporter just to scroll through so you
21 can see these are all the spiral notebook
22 and you're familiar with the contents.

23 THE WITNESS: Okay. Go ahead and
24 scroll, please. This appears to be a
25 similar document that was provided to me by

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2 counsel.

3 MR. BERMAN: Please just take your time
4 and scroll through to the end so you can
5 confirm --

6 THE WITNESS: Yes, absolutely. Go
7 ahead. Can you go back a page?

8 I want to point out that this page is
9 not from the spiral notebook. It may have
10 been -- it may have been clipped into that
11 or sometimes I would write on a pad and
12 maybe clip into the spiral notebook but I
13 recognize this.

14 MR. BERMAN: Okay. Thank you.

15 Let the record reflect that the witness
16 has just been shown documents Bates-stamped
17 DEF002520 through 2649.

18 Q. Ms. Saunders, have you seen these pages
19 before?

20 A. Yes.

21 Q. Can you tell me what they are?

22 A. They are pages from spiral notebooks I
23 kept during my tenure at MCHA.

24 Q. Thank you. And you kept a number of
25 notebooks, correct?

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2 A. Correct.

3 Q. Okay. Turning to the very first page in
4 the middle portion of the page --

5 MR. BERMAN: Toni, if you can zoom up to
6 the top.

7 Q. -- there's a date at the top left corner
8 of the page it says February 25th, 2014?

9 MR. BERMAN: Zoom up higher.

10 Q. Do you see the date now?

11 A. Yes.

12 Q. And the subject in the box where it says
13 legal department?

14 A. Yes.

15 Q. If you scroll down towards the middle of
16 the page, it says legal, underlined, in the
17 middle, do you see that?

18 A. Yes.

19 Q. Do you see these notes under there where
20 it says meets, Jordan, Kaz. Exceeds, Andy, Kath,
21 Kell?

22 A. Yes.

23 Q. Are these performance ratings?

24 A. Yes.

25 Q. There's a comment there that says

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2 3.9 percent next to the word Jenn, do you see
3 that?

4 A. Yes.

5 Q. What does that mean?

6 A. That would be the percent increase on
7 the base salary, that's what that means to me.

8 Q. Next to the word Jenn, it says, exceeds,
9 has grown a lot. Are those comment about Ms.
10 Fischman?

11 A. Yes.

12 Q. Okay. Do you see next to that where it
13 says, new intern will report to her?

14 A. Yes -- no, actually it -- I can't see
15 that because on my screen the participants --

16 THE REPORTER: I will move it.

17 A. New intern will report to her, yes.

18 Q. Was there a new intern that was being
19 hired at that time?

20 A. No, I believe that referred to an intern
21 from Japan. Japan would send over what they're
22 called interns to work in the legal department.

23 Q. Was that Mako?

24 A. I don't recall -- Mako was an intern. I
25 don't recall who it was at the time.

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2 Q. Okay. Do you see next line where it
3 says, expectation to continue to grow, slash,
4 expand?

5 A. Yes.

6 Q. What does that mean?

7 A. I'm sorry, I didn't hear your question.

8 Q. What does that mean?

9 A. My interpretation of that is that it
10 means that was Donna's comment about Jennifer.

11 Q. So are these notes about your comments
12 with Donna concerning personnel in the legal
13 department?

14 A. Yes.

15 Q. Okay. And there's comment to the right
16 that says, keep pushing to be a GC here or
17 elsewhere, do you see that?

18 A. Yes.

19 Q. What does that mean?

20 A. That -- to me that means from a career
21 goal standpoint -- that was her career or goal to
22 be -- eventually become a GC.

23 Q. And your understanding is that this is a
24 result of your conversation with Ms. Costa?

25 MS. PRIMAVERA: Objection.

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2 Q. In other words, that comment is based
3 upon -- these notes are based upon your
4 conversation with Ms. Costa, right?

5 A. Yes.

6 Q. So when it says, keep pushing to be a GC
7 here or elsewhere, is that comment from Donna?
8 And is it conveyed as Donna's sentiment or is it
9 conveyed as Ms. Fischman's sentiment or something
10 entirely different, can you provide a little
11 context for that?

12 A. No, I can't.

13 Q. As of February --

14 A. I mean, my interpretation of reading
15 that right now is that based upon Jennifer and
16 Donna's conversation, that's Jennifer's career
17 aspiration and Donna's commitment to development
18 of Jennifer toward that career goal.

19 Q. Okay. Turning to the next page, right
20 there at the top --

21 MR. BERMAN: Toni, can you scroll a
22 little higher so we can see the date,
23 please.

24 Q. So this appears to say 7/14/2014; is
25 that correct?

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2 A. Yes.

3 Q. Okay. And you see where it says,
4 Hasebe, top center?

5 A. Yes.

6 Q. Was there a gentleman named Harry Hasebe
7 at MCHA during approximately this time?

8 A. Yes.

9 Q. Was he a Japanese citizen?

10 A. I don't know. He was -- I don't know if
11 he was a Japanese. I don't know his citizenship.

12 Q. You used the term previously today
13 expatriate right?

14 A. Right. He's not an expatriate.

15 Q. He's not, okay. Do you know whether he
16 was employed by MCHA?

17 A. Yes, I believe he was employed by MCHA.

18 Q. Okay. Who made the decision to employ
19 him at MCHA?

20 A. I don't have a clear recollection of
21 Harry Hasebe but at times MCHA, as a services
22 company, would -- what's the best way to explain
23 it? We would have on MCHA payroll individuals
24 who were working not in the businesses of MCHA,
25 meaning the MCHA share businesses but maybe

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2 smaller what they would call incubator businesses
3 from Japan. I don't recall Harry Hasebe's exact
4 position but he was an MCHA payrolled individual
5 as I believe. But, again, not an employee of
6 MCHA like myself, like Donna, like Jennifer and
7 others.

8 Q. Have you completed your response?

9 A. Yes.

10 Q. All right. Did MCHA during your tenure
11 have on its payroll Japanese expatriates?

12 A. Yes.

13 Q. Were any of them from MCHC?

14 A. Likely, yes. But the technical business
15 unit they came from Japan, you know, could vary?

16 Q. Was there a woman at MCHA named Yoko?

17 A. Are you referring to what appears to be
18 the first name up on this page, Yoko.

19 Q. Yoko?

20 A. Yes.

21 Q. Was she in charge of Japanese expats at
22 MCHA?

23 A. Yes.

24 Q. Generally speaking, what were her duties
25 with regard to that?

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2 A. Yoko oversaw the Japanese expat program
3 so -- and the administration of the Japanese
4 expat program.

5 Q. Was it the practice during your tenure
6 at MCHA for Japanese employee of MCHC to come to
7 the United States for some period of time?

8 A. As expats, yes.

9 Q. During that time did they provide any
10 services to MCHA?

11 A. Well, they functioned in roles such as
12 the director of accounting and finance as an
13 expat.

14 Q. Have you complete your response?

15 A. As president.

16 Q. Do you know whether any of the Japanese
17 expatriates on the MCHA payroll during your
18 tenure were also on the payroll of MCHC?

19 A. At the same time?

20 Q. Yes.

21 A. I don't know.

22 Q. Do you know whether any of them were
23 receiving benefits from MCHC while they were
24 employed at MCHA?

25 A. I don't know for certain the very

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2 technical details of the benefits.

3 Q. Okay.

4 MR. BERMAN: Can we please flip down a
5 couple pages to 2523, Toni.

6 Q. Do you see at the top of this page it
7 says 2/18/2015?

8 A. Yes.

9 Q. So you see in the center it say says
10 legal department salary and then there's some
11 kind of symbol or something to the right of
12 salary?

13 A. Yes.

14 Q. What does that say?

15 A. Legal department salary changes.

16 Q. So is that a triangle?

17 A. Yes.

18 Q. So the triangle is the Greek symbol
19 delta?

20 A. Yes.

21 Q. And the Greek symbol delta means change?

22 A. To me it did. I can't say -- that's
23 what I use for change.

24 Q. That's what I'm asking. That was your
25 symbol for change?

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2 A. Yes.

3 Q. So underneath there it says DC, JF, JE;
4 are those initials?

5 A. Yes.

6 Q. Is that Donna Costa, Jennifer Fischman
7 Jordan Elbaum?

8 A. Yes.

9 Q. And to the right of that there are
10 annotations; does that indicate changes to pay?

11 A. Yes.

12 Q. So am I interpreting this correctly that
13 this indicates an increase in Donna Costa's total
14 compensation by \$50,000?

15 A. Yes.

16 Q. And to the right of that it says, base
17 sal; is that her basal 462,000?

18 A. Yes.

19 Q. Plus a 77,000 bonus?

20 A. Yes.

21 Q. For a total of \$539,000?

22 A. Yes.

23 Q. And the annotation below that for
24 Jennifer Fischman reflects a rate of pay of
25 \$300,000 per year?

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2 A. Yes.

3 Q. Okay. And if you scroll down below that
4 where it says, bonus; and it says, counsel,
5 15 percent; assistant GC, 17 percent. Is that
6 assistant general counsel?

7 A. Yes.

8 Q. And below that it says, GC; is that
9 25 percent?

10 A. Yes.

11 Q. So as of this -- as of about this time
12 in February of 2015, do these numbers look right
13 to you?

14 A. Yes.

15 Q. Now, those bonus numbers, are those
16 targets or are those fixed; how did it work?

17 A. Those were fixed and depending upon
18 performance we would award potentially more in
19 bonus.

20 Q. Okay. So these were -- I don't know for
21 lack -- were these guidelines?

22 A. No, these were pretty much the -- for
23 the positions, the positions had, you know, a
24 fixed bonus amount -- again, not a guaranteed
25 bonus amount but a fixed. And depending upon

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2 performance, we would potentially pay higher than
3 that amount, depending upon the individual
4 performance.

5 Q. Okay. So, for example, where it says
6 down below that, counsel 15 percent; was
7 Mr. Elbaum a counsel at that time?

8 A. Yes.

9 Q. So he could have made \$175,000 base plus
10 potentially a 15 percent bonus?

11 A. Yes.

12 Q. And MCHA can exercise its discretion
13 potentially to give him additional; is that
14 correct?

15 A. Based on performance, yes.

16 Q. And same with respect to Ms. Fischman,
17 it say there \$3000,000 base; is that right?

18 A. Yes.

19 Q. So this is in contemplation of her
20 promotion, which was to take effect in April; is
21 that right?

22 A. Yes.

23 Q. Because as of this date she wasn't
24 actually assistant general counsel, right?

25 A. As of --

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2 Q. Excuse me, I misspoke.

3 A. Yes.

4 Q. As of this date in February she was not
5 yet promoted to the acting general counsel
6 position, correct?

7 A. Correct.

8 Q. Are these numbers forward looking
9 numbers?

10 A. Yes. Meaning at the current assistant
11 general counsel, it would be 17 percent but at
12 the acting GC level 25 percent.

13 Q. Okay. So does this document reflect Ms.
14 Fischman's anticipated rate of pay would be
15 \$300,000 plus a percentage?

16 A. Plus a 25 percent bonus, yes.

17 Q. Had she completed a full year in the
18 position the company expected to pay her \$300,000
19 base plus a \$25,000 bonus; did I get that right?

20 A. Plus 25 percent of 300,000 if --
21 whatever that number is.

22 Q. 75,000.

23 A. Thank you.

24 Q. Okay. And then below that where it
25 says, DC Supp, seven percent, no delta. Was what

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2 does that mean?

3 A. Donna contractually had a
4 supplemental -- it was -- oh, actually -- I'm
5 sorry, give me a minute to think, it's been a few
6 years.

7 Donna had a supplemental contribution
8 that was made annually to a nonqualified deferred
9 compensation top hat plan and it was at seven
10 percent of her salary and there was no change to
11 that contribution amount based on her promotion
12 to president.

13 Q. Okay. That benefit that you just
14 described, was that tied to her position as
15 president?

16 A. No, that was tied to her position as
17 executive vice president and general counsel.

18 Q. So, Ms. Costa was both --

19 MR. BERMAN: Withdrawn.

20 Q. Ms. Costa filled the general counsel
21 role and in addition to that she had executive
22 vice president duties, is that correct?

23 A. And chief compliance officer.

24 Q. Okay. When it reflects Ms. Costa's
25 compensation on the top line of this page, is

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2 that with respect go her position as president or
3 something different?

4 A. Her position as president.

5 Q. Okay. So that's her role going forward
6 what compensation she would expect to receive for
7 the year, is that right?

8 A. Yes.

9 Q. All right. Turning to the next page of
10 the document, 2524. This document has a
11 different date at top, it says, 12/10/2014.

12 Do you recall earlier today telling me about
13 the pros and cons of Ms. Fischman that were under
14 consideration prior to her being promoted?

15 A. Yes.

16 Q. Okay. Does this document reflect that
17 same series of conversations?

18 THE WITNESS: Can you scroll up, please.

19 MR. BERMAN: This is the top, we can
20 scroll down a little bit.

21 THE WITNESS: Scroll down.

22 So your question was, does this reflect
23 the, you know, pros and cons that we talked
24 about earlier?

25 MR. BERMAN: Let me rephrase the

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2 question to make it more clear.

3 Q. Earlier today you told me that you had
4 discussions with Donna Costa concerning the pros
5 and cons of each of the potential candidates for
6 promotion, including Ms. Fischman; do you
7 remember telling me about that?

8 A. Yes.

9 Q. So this document is dated December 10th,
10 2014 and it has on the top of it pluses and it
11 says JF on the top, right?

12 A. Right.

13 Q. Does this document concern Jennifer
14 Fischman?

15 A. Yes.

16 Q. Okay. So can you tell me what this
17 document is?

18 A. Again, this would just be notes from one
19 of the conversations that Donna and I had about
20 Jennifer -- pros and cons to her.

21 Q. Sure. Do you see at the top where it
22 says pluses?

23 THE WITNESS: Can you move it back to
24 the -- so I can see the top.

25 MR. BERMAN: Scroll up, please, Toni.

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2 A. Yes.

3 Q. Now am I reading this correctly that it
4 says, okay with her knowledge. She can learn.
5 Smart, can learn?

6 A. Yes.

7 Q. Does that accurately describe one of Ms.
8 Fischman's positive attributes?

9 MS. PRIMAVERA: Objection.

10 A. That was one of the attributes that
11 Donna described, yes.

12 Q. So this information is memorializing
13 information from -- this document is
14 memorializing information provided to you by Ms.
15 Costa?

16 A. In conversation with Ms. -- with, Donna
17 yes.

18 Q. Item number two, knows our orgs; am I
19 reading that right -- is that organizations?

20 A. Yes.

21 Q. I can't make out what's after that, can
22 you?

23 A. Idiosyncrasies.

24 Q. Culture, our business and our people; is
25 that what it says?

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2 A. Yes.

3 Q. And number three says, has changed,
4 learned and grown; is that correct?

5 A. Yes.

6 Q. And then do you see little lower it
7 says, cons to the numbers above?

8 A. Uh-huh.

9 Q. There's like some markings right above
10 that, is that -- is that any written words or is
11 that like impressions from something else? I'm
12 not missing any --

13 A. No, I don't think you're missing any.

14 Q. Where it says, cons to numbers above,
15 number one, it looks like it says, something feel
16 need to limit -- can you make that out and tell
17 me what it say. She'll feel need to --

18 A. Still feel need to limit amount of her
19 work because she can only deal with a limited
20 amount at one time.

21 She will not be EVP so will not have
22 those responsibilities. Things tend to fall
23 through cracks.

24 Q. Okay. What does it say below that?

25 A. She is selective in what she cares

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2 about. Wants to deal only with high profile
3 stuff. Doesn't like shit work. She has
4 capability to change this.

5 Q. And then below that, what does it say?

6 A. Has preconceived judgements - has to
7 learn to manage this emotional reaction. RX is
8 reaction -- short for reaction. She complains to
9 peers in department. Can't do that when you are
10 the boss. Will need to learn to manage her
11 frustrations.

12 Q. So are all of these comments -- are
13 these -- is the source of all this commentary
14 from Donna or are any of these your independent
15 thoughts?

16 A. This would be from Donna.

17 Q. Can you tell me why you were discussing
18 this on December 10th of 2014 after it was
19 already decided to promote Ms. Fischman?

20 A. I'm not certain of the date the final
21 decision came to promote Jennifer.

22 Q. Well, Ms. Fischman was notified of the
23 decision prior to this date, right?

24 A. It was -- it was in December.

25 Q. Would it help to look at another exhibit

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2 to clarify that timing? I can pull another
3 exhibit up for you.

4 A. The date on this is the 14th --
5 December 14th.

6 MR. BERMAN: Let's set this aside but
7 we'll come back to it, Toni.

8 For the moment can we just pull up
9 Plaintiff's Exhibit 30.

10 MS. GUERON: I'm sorry, Matthew, did you
11 put an exhibit number on these notes?

12 MR. BERMAN: Why don't we do it now.

13 The notes we were just looking at, we'll
14 have them marked -- I'm just checking to see
15 what the highest exhibit number we have so
16 far is.

17 I believe this will be Plaintiff's
18 Exhibit 63.

19 (Plaintiff's Exhibit 63, marked for
20 identification.)

21 Q. Ms. Saunders, I'm showing you an exhibit
22 that's been previously marked as Plaintiff's
23 Exhibit 30. Does this refresh your recollection
24 as to when Ms. Fischman was informed of her
25 promotion?

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2 A. Yes.

3 Q. So this document is dated December 11th
4 and this is an e-mail from Donna to you saying
5 she got okay the okay speak to Jennifer, right?

6 A. Yes.

7 Q. Do you know who provided Donna with that
8 okay -- Ms. Costa?

9 A. I do not.

10 Q. Okay. The notes we were just looking at
11 were from December 10th, the day before this
12 e-mail, right?

13 A. (No verbal response.)

14 MR. BERMAN: If this -- we have to go to
15 page 2524.

16 Q. If this conversation is being noted as
17 occurring on December 10th of 2014, can you infer
18 for me or are you able to tell me when the
19 decision was made to promote Jennifer?

20 A. When the decision was made, no. I mean,
21 obviously, the final, you know, would have been
22 according to that e-mail the next day. So, no,
23 I -- again, I don't know when the final decision
24 was.

25 Q. Okay. As of this time it was your

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2 understanding that Donna Costa's intention was to
3 see Jennifer Fischman moving forward on her
4 career goal path towards a potential GC position
5 in the future?

6 MS. PRIMAVERA: Objection.

7 Q. Did I get that right?

8 MS. GUERON: Objection.

9 Q. You want to look at it again? So we
10 have the pros and cons, right?

11 A. Right.

12 Q. And we have in here that the plus were
13 that she was okay with her knowledge, she's
14 learning and growing, she knows the organization,
15 its idiosyncrasies and its culture and, again,
16 she's changed, learned and grown.

17 And under the cons it says, she feels the
18 need to limit the amount of her work; she won't
19 be EDP so she will not have those
20 responsibilities.

21 One of the cons that's listed is things tend
22 to fall through the crack, that's Donna's comment
23 to you, right?

24 A. Uh-huh.

25 Q. She's selective about what kind of work

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2 she wants to do; and she has preconceived
3 judgments and has to learn how to manage them.
4 She has emotional reactions; she complaints to
5 peers, you can't do that when you're the boss.
6 Will need to learn to manage her frustrations,
7 right?

8 A. Uh-huh.

9 Q. If we scroll down a few more pages to
10 page 2526, do you see the top portion of the page
11 here, this is dated August 7, 2015, right?

12 A. Yes.

13 Q. And where it says DC re: JF --

14 A. Uh-huh.

15 Q. -- does this reflect a conversation you
16 had with Donna Costa about Ms. Fischman?

17 A. Yes.

18 Q. So can you describe for me in the big
19 picture what's happening to your understanding
20 between Ms. Fischman and Ms. Costa on or about
21 August 7, 2015?

22 A. This reflects a level of frustration
23 that Donna had reached in working with Jennifer
24 in the role as president and Jennifer as acting
25 general counsel.

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2 THE WITNESS: Can it be made it bigger
3 so I can actually see some of the content?

4 Q. We can go through it, if it will help.
5 Do you want to do that?

6 A. Yes, please.

7 Q. So this document has number of comments
8 on it, right? I'll read what I think it says and
9 tell me if I get any of it wrong because I'm
10 reading your handwriting -- or do want to read it
11 and tell us what it says -- maybe that's better.

12 A. Incapable of not reacting, she baits me,
13 she broke me, I'm admitting failure.

14 MR. BERMAN: Slow down a little so Toni
15 can keep up.

16 A. Incapable of not reacting, she baits me,
17 she broke me. I'm admitting failure. I'm
18 getting more passive/aggressive. I've failed.
19 Not capable of interacting with her without
20 reacting. Am I a good enough manager to get her
21 to a place where I'm comfortable getting her
22 to --

23 Q. Manager level?

24 THE WITNESS: I'm sorry, can you make it
25 slightly bigger?

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2 A. Getting to a manager level, yes.

3 Figuring out how to talk to her, using energy to
4 do it. I tried, I can't do it anymore. I was a
5 child. I couldn't react appropriately. She
6 baits me. It's just Jennifer, it's who she is.
7 I want to talk to you, take 30 to 40 minutes to
8 think about everything happening. Did someone
9 complain? Did Kelli? What are you seeing me not
10 do that suggests I'm not capable? I have many
11 balls in the air, what. Expat training example,
12 time consuming. Well, I'm not responsible for
13 it. How important she was there. Is something
14 wrong, have I screwed up. No, you're working
15 hard but I don't want something falling through
16 the cracks.

17 Q. We're going to the next page. Can we
18 pause here for a moment?

19 A. Yes.

20 Q. On this page there are a couple of spots
21 in the left margin where you got initials there.

22 MR. BERMAN: If Toni scrolls down a
23 little more I think you'll see those. Toni,
24 can you scroll down just a little bit.

25 Q. Do you see those notes on the side, JF,

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2 DC; JF, DC?

3 A. Yes.

4 Q. Is this document memorializing a
5 conversation between you and Donna, where you're
6 using initials to indicate what Donna is saying
7 she, Donna, told you and what Donna is saying
8 what Jennifer told Donna? How does this work?
9 Can you explain what these initials are?

10 A. Yes, the initials I would have --
11 probably reading back through later for my own
12 understanding. The initials mean this is what
13 Jennifer said and then this is what Donna said.

14 Q. Okay. Am I interpreting this correctly
15 to begin with a discussion between you and Donna
16 where she's questioning whether she's -- whether
17 she's failed as a manager and getting
18 passive/aggressive and relating that to
19 Jennifer's performance. And then at some point
20 the conversation transitions to Donna relaying to
21 you the substance of a conversation that Donna
22 Costa had with Jennifer Fischman? Did I get a
23 that right?

24 A. Yes.

25 Q. It's sort of like a conversation within

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2 a conversation?

3 A. Yes.

4 Q. In this conversation within a
5 conversation, Donna, I'm interpreting this, so
6 tell me where I'm getting this incorrect, if I
7 am.

8 I'm just trying to understand your notes. Is
9 this basically saying that Donna is relaying a
10 conversation where she, Ms. Costa, went to Ms.
11 Fischman, I want to talk to you. Fischman
12 responds, did someone complainant about me, why
13 are we talking? She's asking whether Kelli
14 complained about her. Are you -- what are you
15 seeing about me that suggests I'm not capable,
16 Fischman is asking Costa. Did I get that part
17 right so far?

18 A. Yes.

19 Q. Okay. And then Costa is relating her
20 response to Fischman an example concerning the
21 expatriate training, right?

22 A. Uh-huh.

23 Q. What does it say after expatriate's
24 training example on that line?

25 A. Time -- I think time consuming. I

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2 think.

3 Q. Okay. So is Costa critiquing Fischman
4 for spending too much time on patriate train --
5 or expatriate training? Do you know what the
6 substance of the critique was there?

7 A. I'm rereading it. Just give me a
8 second.

9 Q. Sure.

10 A. And your question again?

11 Q. So did Ms. Costa relate to you that she
12 provided a critique of Ms. Fischman's performance
13 with respect to expatriate training?

14 A. I really -- other than what's written
15 here on the page, I'm not really -- I'm not
16 certain what she's saying here.

17 Q. At the time that this notation was made,
18 did you know what she was talking about at the
19 time?

20 MS. GUERON: Objection.

21 A. I don't know.

22 Q. Okay. Did Donna relate to you that she
23 told Ms. Fischman you're working hard but I don't
24 want something to fall through the cracks?

25 A. (No verbal response.)

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2 Q. I'm looking at very bottom of the page
3 here?

4 THE WITNESS: Please scroll up a little.
5 You're working hard but I don't -- I see it
6 never mind.

7 A. That's my note as to what Donna was
8 saying to me at the time.

9 Q. And then if you go to the next page of
10 this notebook, 2527, is this part of the same
11 conversation between you and Ms. Costa?

12 A. Yes.

13 Q. Okay. So she's continuing to relate to
14 you the substance of her communication with Ms.
15 Fischman, right?

16 A. Yes.

17 Q. Is Donna relating to you that there was
18 some understanding on Ms. Fischman's part that
19 Ms. Costa wanted responsibility for a transaction
20 in Brazil?

21 THE WITNESS: Can you scroll down or
22 scroll down.

23 Again, your question about Brazil. You
24 asked me --

25 MR. BERMAN: Can you please read it

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2 back, Toni.

3 (Whereupon, the last question was read
4 back.)

5 A. Again, other than what my notes say on
6 the page, I don't -- I don't have any clearer
7 interpretation today.

8 Q. Okay. Let's flip to the next page,
9 2528. Start at the top of the page. This is
10 still August 7, 2015 and the document appears to
11 say, she comes in my office, how about this how
12 bout this, how bout I don't work on Brazil. Am I
13 reading it correctly?

14 A. Yes.

15 Q. And then it says DC, which is Ms. Costa,
16 are you saying this because you recognize you're
17 too busy or because we're stepping on each
18 other's toes and it's inefficient. Did I read
19 that right?

20 A. Yes.

21 Q. Then it says JF, Ms. Fischman's
22 response, was it's inefficient. Did I get that
23 right?

24 A. Yes.

25 Q. Then it says below that, she left me

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2 thinking this is not a sustainable situation.

3 Our relationship sucks. I can't do it. Am I

4 reading that correctly?

5 A. Yes.

6 Q. And that's Ms. Costa explaining to you

7 how she felt after speaking with Ms. Fischman,

8 right?

9 MS. PRIMAVERA: Objection.

10 Q. You can answer. Am I reading this

11 correctly?

12 A. Yes.

13 Q. Okay. So then below that, you see where

14 it says steps?

15 A. Uh-huh.

16 Q. What does it say under steps, can you

17 read that to me please.

18 A. Lay ground work with Japan. I tried but

19 can't make her GC. I will give her a six-month

20 review on paper.

21 Q. What does it state below that?

22 A. What's not working?

23 Q. Can you read remainder of that bottom

24 portion of the page.

25 A. I always told her she was competent

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2 substantively. She has improved but has gotten
3 better but people still have reservations. My
4 reservation is long term.

5 Q. What does it say below that?

6 THE WITNESS: Can you scroll down,
7 please.

8 A. I am considering letting her go sooner
9 than March 31 but definitely March 31. How will
10 I interact with her. Should --

11 Q. Can I pause you here for a second.

12 MR. BERMAN: I this will make it easier
13 for all of us. Toni, if you can just leave
14 this over here but then also pull up exhibit
15 I sent you labeled notebook 10.

16 Turn to the fourth page of this
17 document -- let's mark this as Plaintiff's
18 Exhibit 64.

19 (Plaintiff's Exhibit 64, marked for
20 identification.)

21 MS. PRIMAVERA: Matt, are these
22 Bates-stamped documents or are just photos
23 that you took in the office?

24 MR. BERMAN: Yes, this is just a photo
25 of the same document that you copied.

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2 MS. PRIMAVERA: These are photographs
3 you took?

4 MR. BERMAN: Yes, an iPhone photo so
5 it's a little more crisp of a copy than what
6 was produced.

7 Ms. Saunders, you're welcome to compare
8 this to the other document. I thought this
9 might assist you in telling us what it says.

10 MS. COLWIN: Matthew, I need a
11 representation from you --

12 MS. PRIMAVERA: Mercedes, we can't hear
13 you. I think you might have lost service.

14 MR. BERMAN: I'll try to anticipate what
15 her request is. I'll represent that this is
16 a true and correct photograph taken of the
17 same page of notebook 10 that we've just
18 been reviewing.

19 (Whereupon, Ms. Colwin dropped off and
20 re-entered.)

21 MS. COLWIN: Matthew, I need a
22 specific -- number one, I need confirmation
23 on the record that there are no other
24 photographs that exist of documents that
25 were provided to you and to Ms. Fischman for

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2 discovery inspection other than ones that
3 were photographed -- photocopies and
4 Bates-stamped and provided to you.

5 I have to tell you -- and I said this --
6 obviously, you didn't hear any of this but
7 this is shocking behavior. I've been
8 practicing a long time and I have never seen
9 opposing counsel take photographs of
10 documents and provide them at the
11 deposition, that is not what's done. I'm
12 presuming it wasn't used who took the
13 photographs.

14 It is completely inappropriate to
15 conduct a discovery and inspection in this
16 way -- completely inappropriate.

17 MR. BERMAN: Have you --

18 MS. COLWIN: I'm not -- I'm not
19 finished. I need a representation to you
20 that there are no other photographs that
21 exist of documents provided to you and Ms.
22 Fischman for that discovery inspection other
23 than what's already been provided and a
24 photocopy and Bates-stamped.

25 MR. BERMAN: Are you done now?

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2 MS. COLWIN: Yes.

3 MR. BERMAN: Okay. Let's take a few
4 minutes off the record.

5 (Whereupon, a brief recess was taken.)

6 MR. BERMAN: Is everyone here?

7 MS. PRIMAVERA: Yes.

8 MR. BERMAN: I'm a going to keep posing
9 questions to the witness.

10 Q. Ms. Saunders, can you tell me what
11 remainder of the bottom portion of the document
12 says?

13 MS. COLWIN: Matt, I want a
14 representation on the record about what I
15 just stated. Are you not going to make a
16 representation? Tell me now.

17 MR. BERMAN: Your request --

18 MS. COLWIN: No -- excuse me, I'm not
19 done. I want a representation right now --
20 and if you're not willing to give a
21 representation, I need to -- we need to call
22 the judge. I will review the rules and we
23 need to call the judge. I want a
24 representation right now.

25 MR. BERMAN: I'm not making any

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2 representation on the record.

3 MS. COLWIN: Fine. We're going to take
4 a break. I'll review the rules that govern
5 the procedure and see if Judge Furman will
6 take our call.

7 MR. BERMAN: That's fine.

8 MS. COLWIN: Brittany, please call me.

9 MS. PRIMAVERA: Sure.

10 (Whereupon, a brief recess was taken.)

11 MS. PRIMAVERA: Matt, instead of, you
12 know, involving the Court and you know
13 filing a follow-up motion to address the
14 issue, can we just call for the production
15 of any and all photographs that were taken
16 in our offices on the date of the D&I in
17 addition to this one -- to extent there are
18 additional photographs taken from that day?

19 MR. BERMAN: Are we on the record or are
20 we off the record?

21 THE REPORTER: We are on the record.

22 MR. BERMAN: Your request is noted.

23 Let's go off the record for a moment.

24 MS. PRIMAVERA: Okay.

25 (Whereupon, a brief off-the-record

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2 discussion was held.)

3 MS. PRIMAVERA: So off-the-record myself
4 and Mr. Berman stipulated that he and his
5 client would turn over any documents,
6 including the photographs that relate to the
7 D&I that took place here, including the
8 document that was used today, which is not
9 yet Bates-stamped.

10 Is that accurate, Mr. Berman?

11 MR. BERMAN: Yes.

12 MS. PRIMAVERA: Mercedes or Nicole, do
13 you want to add anything before I move on?

14 MS. COLWIN: That's fine. Thank you.

15 MS. GUERON: That's fine.

16 MS. PRIMAVERA: Thank you.

17 MR. BERMAN: Toni, can you please read
18 back my last question.

19 (Whereupon, the last question was read
20 back.)

21 A. I am considering letting her go sooner
22 than March 31st but definitely March 31st. How
23 will I interact with her when she comes. Should
24 we document. Yes. Do you think it's dangerous
25 to be writing down what others say. No.

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2 Q. Okay. Did you have a concern about how
3 to act with Ms. Fischman after your discussion
4 with Ms. Costa on August 7th of 2015?

5 A. Did I have a concern, was that your
6 question? I don't I think understood your
7 question.

8 Q. Yes. When you were making this
9 notation, was that your thought, "How will I
10 interact with her," or was that Donna's thought?

11 A. I believe that was Donna's thought.

12 Q. Okay. So did Donna Costa identify a
13 concern with interacting with Ms. Fischman going
14 forward?

15 A. The note is incomplete there. How will
16 I -- it says how will I interact with her when
17 she comes -- and I don't know what the rest of
18 the statement was.

19 Q. Do you see that comment, should we
20 document. In parenthesis, yes?

21 A. Yes, I see that.

22 Q. What does that mean?

23 A. I don't know what that's specifically
24 referred to.

25 Q. Okay. Let me direct your attention to

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2 the top left corner of this same page.

3 MR. BERMAN: Toni, please scroll up.

4 Q. Are there are notes in the marginalia on
5 the left-hand side. Can you read that to me?

6 MR. BERMAN: Toni, can you scroll down
7 as she does so she can see what it says.

8 A. Will my listening to JF knowing what I
9 know about DC's intentions. I need to have
10 heightened awareness to her complaints and what I
11 say to her.

12 MR. BERMAN: Can you scroll down a
13 little, please.

14 Q. What does this note say?

15 A. We're not documenting for cause, we're
16 documenting -- let me start that over. We're not
17 documenting for cause - document to have the
18 story.

19 Q. When it says we're not documenting, does
20 it say termination to the right of that?

21 A. We're not documenting cuz, C-U-Z,
22 termination, which is crossed out, for cause -
23 document to have the story.

24 Q. What do these notes mean?

25 A. (No verbal response.)

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2 Q. That's your initials at the top of the
3 marginalia, right?

4 A. Yes.

5 Q. What do these notes mean?

6 A. These notes in the margin?

7 Q. Yes.

8 THE WITNESS: Can you go back up.

9 MR. BERMAN: Can you make it larger.

10 A. To me, this was -- the way I interpret
11 this is Donna saying, I need to have a heightened
12 awareness to Jennifer's complaints and what I
13 what I say to her and we're documenting to have
14 the story.

15 Q. What are you documenting to have, what
16 story?

17 A. The ongoing -- the same as has been
18 documented all along, what the interactions are,
19 the exchanges between Donna and Jennifer, the
20 issues that are documented in the notes.

21 Q. Okay. Did these notes reflect the
22 intention to terminate Ms. Fischman definitely
23 before March 31 of 2016?

24 MS. PRIMAVERA: Objection.

25 THE WITNESS: Can you scroll down so I

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2 can read that again.

3 A. I don't --

4 Q. Do you see where it says there, I'm
5 considering --

6 A. I'm considering letting her go -- I'm
7 just reading the note to myself.

8 This documents a conversation between
9 Donna and I where she was, as best as I can
10 recall, very frustrated with what was occurring
11 between her and Jennifer and this documents what
12 she said to me on the phone.

13 Q. Okay. And that included her expression
14 to you of her intention to let Jennifer go,
15 correct?

16 A. That's what the -- the words that are
17 written there.

18 Q. Okay. And there's some discussion as to
19 the timing, whether it's sooner than March 31st
20 or by March 31, correct?

21 A. But she's also saying I'm considering
22 letting her go.

23 Q. It says I'm considering letting her go
24 sooner than March 31st, right?

25 A. Yes.

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2 Q. Turning to the next page also dated
3 August 7th. At the top there it says second
4 call.

5 MR. BERMAN: Toni, can you scroll down a
6 little, please.

7 THE WITNESS: Toni, you will need to
8 please move it to my left.

9 Q. Can you please tell me what this says
10 from the top on down to the remainder of the
11 page.

12 A. I've been lying to her from day one.
13 For three months I gave no feedback because she
14 said she couldn't handle it. Now in July I give
15 it to her straight. I cannot work with someone
16 where my entire relationship is based on a lie.
17 I told Japan she wasn't qualified. I gave her a
18 negative review because was going to hire a GC.
19 Japan said no. My responsibility to train her.
20 They not worried about legal because I would be
21 there still. I need to tell her this. Can I
22 tell her this. What does it get you.

23 Do you want me to read to the middle or
24 the page or the whole page?

25 Q. If you can just read down to the

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2 remainder of the page because you're most of the
3 way there.

4 A. I've done everything I can. This is the
5 last thing I have to try. Removes all barriers.
6 Issues to resolve as move forward term. Get
7 Japan approval, money. DC, quote, that's the
8 easy part. Andy issue - he think he should be
9 GC. All the reasons I gave him why her over him.
10 Now, why not him? Pharma Company acquisition -
11 he could be GC. GC hiring issue. Confidential
12 search not good. Gap when she's gone.
13 Disruption to department. Search.

14 Q. Thank you. Do you see on line 17 of the
15 document on the left-hand side, it says PS?

16 A. Uh-huh.

17 Q. Is this document reflecting a call you
18 had with Ms. Costa on August 7, 2015?

19 A. Yes.

20 Q. It says at the top, 2nd call?

21 A. Yes.

22 Q. Is the first portion of the document --
23 the first 16 lines her commentary to you?

24 THE WITNESS: Please scroll up so I can
25 see those lines.

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2 A. Yes.

3 Q. Okay. And on line 17 where it says, PS,
4 what does it get you, is that your reply to her,
5 Donna, what does that get you?

6 A. Yes.

7 Q. And lines 18, 19 and 20, is that then
8 Ms. Costa's response to you again?

9 THE WITNESS: Please scroll down.

10 A. Yes.

11 Q. Okay. Do you have an understanding what
12 she meant by the term, removes all barriers?

13 A. I think that that meant the barriers to
14 their relationship going forward.

15 Q. Okay. So Ms. Fischman was promoted and
16 took office as acting general office and chief
17 compliance officer in April of 2015, right?

18 A. That was the official start date. The
19 transition and the work that she and Donna did to
20 transition Jennifer and ensure she was as
21 successful as possible in role began basically
22 January 1st.

23 Q. Okay. So from January through April
24 there was a period during which Ms. Fischman was
25 being transitioned or prepared to take on the

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2 role, right?

3 MS. PRIMAVERA: Objection.

4 A. It was a -- yes, a transition period, a
5 transfer of information and grooming, yes.

6 Q. What do you know about the process of
7 transferring the information?

8 A. That Donna had meetings with Jennifer
9 and a -- number of meetings and discussions to
10 educate her about the position. There a number
11 of -- well, that's basically it, a number of
12 meetings and discussions to help transfer the
13 information.

14 Q. So then she actually took -- she
15 actually commenced the new role in April of 2015,
16 right?

17 A. Jennifer, yes.

18 Q. So from April through the time of this
19 notation, was there any feedback given to Ms.
20 Fischman concerning her performance in the new
21 role?

22 A. There were ongoing -- ongoing
23 conversations, as best as I can recall, January,
24 February, March. There was concern on Donna's
25 part during that time that Jennifer -- the

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2 download of information while Jennifer was
3 actively taking notes and things like that, it
4 appeared to be one way; that Jennifer was not
5 coming proactively to Donna with questions and --
6 with questions and concerns or anything along
7 those lines. Donna, my understanding from my
8 conversations with Donna, would frequently,
9 again, meet with Jennifer.

10 So, Jennifer assumed the position in the
11 beginning of April. Part of what I was hearing
12 from Jennifer was Donna would want, you know, a
13 lot of dialogue or ask questions of Jennifer and
14 Jennifer was wanting space to do her thing and
15 one of the things I had advised Donna was as
16 she -- as we approached April 1st to give
17 Jennifer space so that she can, you know,
18 establish herself in the role, do her thing and
19 Donna took my advice and backed off, if you will,
20 in trying to dialogue and establish more
21 communication between the two of them. And so in
22 response to was there feedback being given, I
23 can't say specifically because I was not in all
24 of their conversations and every time they had
25 conversations back and forth I was not

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2 necessarily made aware. But there was a
3 conscious effort on Donna's part during time to
4 give Jennifer some space to operate in the role
5 in the way Jennifer was comfortable.

6 Q. Okay. Have you completed your response?

7 A. Yes.

8 Q. Okay. With respect to the portion of
9 your response about Donna Costa making a
10 conscious effort to give Jennifer space, what's
11 the basis for that statement?

12 A. (No verbal response.)

13 Q. What's that based on? How do you know
14 that?

15 A. Well, I knew that from my daily -- not
16 daily interactions but my frequent interactions
17 working with Donna.

18 Q. Okay.

19 A. And excuse me -- not to interrupt but I
20 think that speaks to somewhere in the note where
21 it says -- it references that I not had spoken
22 with her in a while. Anyway -- I thought there
23 was a notation that sort of -- without me going
24 back through and reading, I think some of this
25 notation is -- indicates that kind of time period

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2 where Donna was consciously backing off and
3 allowing Jennifer some space.

4 Q. Well lines three through five or two
5 through 5 of this note says I've been lying to
6 her from day one. For three months I gave no
7 feedback because she said she couldn't handle it.
8 Now in July I give it to her straight, right,
9 that's what the note says?

10 A. Right.

11 Q. So you wrote cone down what she told
12 you, right?

13 A. Yes.

14 Q. So she told you this comment, for three
15 months I gave her no feedback because she said
16 she couldn't handle it. Now in July I give it to
17 her straight, right?

18 A. Uh-huh.

19 Q. Does that mean from April through July
20 Ms. Fischman had no feedback from her supervisor?

21 MS. PRIMAVERA: Objection.

22 Q. How did you understand this?

23 A. The word -- the note says for three
24 months I gave no feedback because she said she
25 couldn't handle it. "She" being Jennifer. That

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2 in combination with my advice to her to give
3 Jennifer space. I believe there were -- no, that
4 in addition to my advice to give her space and
5 Jennifer's request not to have feedback.

6 Q. I think you didn't answer exactly what I
7 asked you.

8 MR. BERMAN: Toni, can you please read
9 back the question.

10 A. For three months --

11 MR. BERMAN: I asked the court reporter
12 to read back the question.

13 (Whereupon, the requested portion of
14 testimony was read back.)

15 A. My response to that is generally, yes,
16 because Jennifer specifically asked for no need
17 back.

18 Q. Okay. So up until July Ms. Fischman had
19 no candid feedback from her supervisor on her
20 performance in the role, right?

21 MS. PRIMAVERA: Objection.

22 A. Up until July from what time period? I
23 would say she had feedback. She definitely had
24 conversations with Donna. There was, you know,
25 feedback and discussions that were occurring.

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2 There was a period of time starting with April,
3 May, June where there was a conscious effort and
4 at Jennifer's request to just try -- just move
5 forward, give everybody their space is how I
6 would describe it.

7 Q. So up through July this is what's
8 happening and then August 7th the decision is
9 made to the terminate her, right?

10 Let's look at the next page, August 7th also,
11 right? The note here at the top says, JF re: KT
12 absences.

13 A. Yes.

14 Q. Is this the issue of Ms. Fischman and
15 Mr. Troccoli's conflict sort of comes to a head
16 over the fact that for various -- a mix of
17 reasons Ms. Troccoli is out of the office?

18 A. I would say that this is not the point
19 at which it came to a head. I would say this is
20 the point at which it started to really bubble
21 up.

22 Q. Okay. Ms. Troccoli and Ms. Fischman had
23 had a tenuous relationship for years up to this
24 point, correct?

25 A. That's generally accurate, yes.

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2 Q. There was some incident where a notary
3 came to visit the office and Jennifer complained
4 about how many Troccoli handled it, right?

5 A. Yes.

6 Q. And there were other points of tension
7 between Ms. Fischman and Ms. Troccoli from this
8 point onward, right?

9 A. What do you mean by points of tension?
10 Can you --

11 Q. Well --

12 A. -- be more specific?

13 Q. Ms. Troccoli filed a formal complaint
14 against Ms. Fischman, correct?

15 A. Correct.

16 Q. And Ms. Fischman filed a formal
17 complaint against Ms. Troccoli, correct?

18 MS. PRIMAVERA: Objection.

19 A. The formal complaint filed against Ms.
20 Troccoli was actually later in the year.

21 Q. But each of them filed a complaint
22 against the other, right?

23 A. Yes.

24 Q. And Ms. Fischman complained to you that
25 she felt Ms. Troccoli was undermining her

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2 authority, right?

3 MS. PRIMAVERA: Objection.

4 A. Is that -- is there a note that says
5 undermining my authority?

6 Q. I'm generalizing but you can respond
7 however you wish.

8 A. I -- other than -- I'm not sure
9 undermining my authority would characterize it, I
10 have no further response.

11 Q. Let's be more specific. On note -- on
12 this note line 23, Ms. Fischman is indicating to
13 you, correct me if I'm misinterpreting this, Ms.
14 Troccoli is not there to help Ms. Fischman do her
15 job right and below that is the comment, I need
16 to start documenting, right?

17 A. Yes.

18 Q. Do you have an understanding of what
19 this term means, documenting?

20 THE WITNESS: Can you scroll down so I
21 can see the rest of the note. I don't know
22 the reference to documenting in this
23 context.

24 A. I need to start documenting -- I don't
25 recall or I don't know in this, I need to start

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2 documenting, what the documenting refers to.

3 Q. Okay. Well, was Ms. Troccoli
4 responsible for providing administrative support
5 to Ms. Fischman?

6 A. Ms. Troccoli's role -- Kelli's role was
7 role was not as an administrative assistant. She
8 did certain administrative matters for the legal
9 department.

10 Q. Did Ms. Fischman complain to you that
11 she felt Ms. Troccoli was bullying her?

12 A. Jennifer expressed to me in comments and
13 in the notes that, yes, she felt that was
14 bullying or she felt she was being bullied.

15 Q. And did Ms. Fischman complain that Ms.
16 Troccoli wasn't supporting her?

17 A. Yes, she complained to me that she felt
18 she wasn't getting support from Kelli.

19 Q. Okay. All right if you flip forward to
20 page 2532, this is note dated August 11th. At
21 top it says, DC re: JF. Do you see that?

22 A. Yes.

23 Q. All right. So does this reflect a
24 conversation you had on or about August 11th of
25 2015 with Ms. Costa about Ms. Fischman?

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2 A. Yes.

3 Q. Can you interpret this note for me -- I
4 can't read the top. What does that say from line
5 1 through 3?

6 A. Unfortunately, I'm not sure about the
7 first line myself. How much I am pre to be -- I
8 don't know what the next word is --
9 because doesn't get along with -- I think DC --
10 the yellow thing is blocking -- and then hyphen,
11 not good, GC.

12 Q. Do you know what that note means?

13 A. I don't.

14 Q. If you continue looking down on this
15 page it continues on and it has a notation, DC,
16 if I step back in way I think I need to -- and
17 there's an arrow to right -- if I do, what I'm
18 giving up on is -- what does it say after that?

19 A. What I'm giving up on is having a GC who
20 I trust -- trust to seek advice from me or
21 others. I am --

22 Q. By definition --

23 A. By def -- definition accepting less than
24 what --

25 Q. I expect --

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2 A. -- I am by definition accepting less
3 than what expect.

4 Q. What does it say in the next few lines
5 below that, numbers 13 through 17?

6 A. Why do I expect her to be me. I have
7 super high expectations. Lower my expectation
8 for quality of work, role of GC, accept a lesser
9 definition of GC.

10 Q. What does that mean?

11 MS. PRIMAVERA: Objection.

12 A. This is Donna struggling with her own
13 thoughts -- struggling with herself to
14 objectively evaluate whether Jennifer's
15 performance -- she can accept a level of
16 performance versus what Donna feels her level of
17 expectations of performance of the GC should be
18 and questioning -- she acknowledges she has high
19 expectations but questioning can that be okay,
20 can I -- can I accept that and can I work -- can
21 I accept that. And so she's really soul
22 searching her -- to see if she can accept what
23 she feel is not a level of expectation or has
24 been receiving a level that she would expect from
25 Jennifer.

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2 Q. Do you see that note on line 13 that
3 says, why do I expect her to be me. What does
4 that mean?

5 MS. PRIMAVERA: Objection.

6 A. I don't know that I can interpret that.

7 Q. Okay. Is Ms. Costa holding Ms. Fischman
8 to the standard of Ms. Costa's own performance at
9 the point of time when she already been the
10 incumbent of the role for many years?

11 MS. PRIMAVERA: Objection.

12 MS. GUERON: Objection.

13 Q. You can answer.

14 A. I don't agree that this -- I don't
15 agree -- I don't think there's -- I don't think
16 you can draw that direct conclusion, no.

17 Q. Can you see the marginalia on the
18 left-hand side, is that visitable to you?

19 A. Not all of it.

20 MR. BERMAN: Toni, can you scroll over
21 so she can see the marginalia on the left,
22 please.

23 Q. Do you see that one on the bottom that
24 says DC next to it?

25 A. Uh-huh.

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2 Q. What does is that say?

3 A. If I back off will things get better.

4 Will she ever learn to come to me with questions.

5 Hasn't asked me anything in four months never.

6 Knows it all, not willing to listen.

7 Q. And then under line 18 --

8 MR. BERMAN: On the right again, if you
9 scroll down a little please.

10 Q. So line 18 that says, pro gen example,
11 is that project Genesis?

12 A. I believe so, yes.

13 Q. What does it say below that?

14 A. New project --

15 THE WITNESS: Can you please shift it to
16 my left a little bit.

17 A. New project - go into her office - ask
18 if she'd like to have financial advisement -- ask
19 if she'd like to have financial advisement.

20 Leaves for vacation without talking to me. She
21 was willing to talk while away but schedules
22 didn't work. I met with Jordan. She came up
23 with her list of firms. Didn't meet the
24 criteria. In process of asking questions. She
25 digs in. She's arguing in support of firms she

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2 doesn't know.

3 Q. Next page. This is --

4 MR. BERMAN: Can you scroll up a little
5 bit, please.

6 Q. This is August 17th and the notation
7 says JF re: KT. This is a conversation where
8 Jennifer is speaking with you about Ms. Troccoli,
9 right?

10 A. Yes.

11 Q. So there's an issue with some e-mails
12 that were exchanged. Did Ms. Fischman complain
13 to you from looking at line four that she was
14 upset that Ms. Troccoli's response was hostile
15 and disrespectful?

16 A. Yes.

17 Q. So this is a continuing strife between
18 Ms. Troccoli and Ms. Fischman, right?

19 A. Yes.

20 Q. Towards the bottom on line 26, it
21 says -- so line 22, did Ms. Fischman relate to
22 you she hadn't spoken to Kelli about the e-mails?

23 A. Yes.

24 Q. So was she coming to you for advice on
25 how to handle it?

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2 A. I don't know that she was coming to me
3 for advice on how to handle it. I -- the
4 conversation led to that.

5 Q. So on line 26 it says, separate issue,
6 medical condition. Is there a need for
7 accommodation, right?

8 A. Yes.

9 Q. There was a medical mention to Ms.
10 Troccoli's absences, right?

11 A. Yes, there was.

12 Q. So there was a discussion between you
13 and Ms. Fischman about keeping the medical issue
14 separate, correct?

15 A. There were a number of discussions and
16 the matter of -- the matter of Kelli's absences
17 from the office were a source of frustration for
18 Jennifer. And in that mix was the fact that
19 many -- not all, but many of Kelli's absences
20 from the office were due to medical reasons. And
21 so as Jennifer expressed frustration with Kelli,
22 at the same time we have difficult situation
23 with Kelli being absent for medical reasons and
24 managing that aspect or me helping Jennifer
25 appropriately manage that aspect of -- in her

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2 interactions with Kelli so that we wouldn't run
3 into issues of ADA discrimination or things of
4 that nature.

5 Q. And Ms. Fischman was well informed about
6 the nature of the disability discrimination
7 claims, right?

8 MS. PRIMAVERA: Objection.

9 A. I can't say she was well informed.

10 Q. Well, she had an outside attorney,
11 Steven Moss, who was advising her on it, didn't
12 she?

13 MS. PRIMAVERA: Objection.

14 MS. GUERON: Objection.

15 A. There was a communication that he
16 provided to her regarding disability leave and
17 accommodation.

18 Q. Okay. At the time of -- well, at the
19 time of Ms. Costa's promotion from general
20 counsel to president, as she was -- at the time
21 she was exiting the general counsel role, how
22 many assistant general counsels did she have
23 supporting her?

24 A. There were three when she was in general
25 counsel role.

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2 Q. Okay. And when she transitioned to the
3 president role and when Ms. Fischman became the
4 acting general counsel, how many assistant
5 general counsels did Ms. Fischman have supporting
6 her?

7 A. She had two.

8 Q. So when Ms. Costa ascended from GC to
9 president she left the GC role vacant; Ms.
10 Fischman was bumped up into the acting general
11 counsel position and Ms. Fischman's vacated
12 assistant general counsel position was not
13 filled, was it?

14 A. There was an addition to the two staff
15 not at the assistant GC level.

16 Q. Do you know when that addition took
17 place?

18 A. I don't know the exact hire date of the
19 individual but it was -- Jennifer recruited and
20 hired the individual into the position and --
21 again, I don't recall the exact date but it was
22 something that she started on fairly soon into
23 the role.

24 Q. Do you have a particular person in mind?

25 A. Steven Rose.

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2 Q. Okay. Was Mr. Rose relatively junior?

3 A. He was hired in at a corporate counsel
4 position as I recall.

5 Q. Okay. And that's the most junior
6 attorney position in the legal department, isn't
7 it?

8 A. Yes.

9 Q. So if we can turn now to page 2537 of
10 the notes. So this note is from August 19, 2015.
11 At the top it says DC. So does this reflect a
12 conversation you had with Donna Costa?

13 A. It appears to, yes.

14 Q. So do you see on line six it says DC
15 wrote to Ken v brief, is that very briefly?

16 A. Yes.

17 Q. Can you tell me, generally speaking,
18 what this is describing?

19 A. Yes. As best I can recall this was the
20 point in time at which Donna started -- reached
21 out to Japan to let them know that she did not
22 feel Jennifer was going to be successful in the
23 position and wished to replace.

24 Q. Okay. On or about August 7th when you
25 were having those conversations that we looked at

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2 that were memorialized in your notes; do you
3 remember those conversations?

4 A. With Donna?

5 Q. Yes, the August 7th conversation that we
6 discussed. Do you remember those?

7 A. Yes.

8 Q. On or about that time, did Donna provide
9 you with a draft e-mail that she was anticipating
10 sending to Mr. Fujiwara?

11 A. There was a draft e-mail, yes, that she
12 provided to him. But from a timeframe
13 standpoint, I think that came later -- a little
14 bit later.

15 Q. Okay.

16 MR. BERMAN: Toni, can we pull up
17 Exhibit 31 real quick.

18 Q. Ms. Saunders, you're being shown a copy
19 of what was previously marked as Plaintiff's
20 Exhibit 31.

21 Ms. Saunders, does this exhibit refresh your
22 recollection as to the timing of the draft e-mail
23 to Mr. Fujiwara?

24 A. Yes, it does.

25 Q. So what was your understanding of why

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2 Ms. Costa was providing you with this draft
3 e-mail to Mr. Fujiwara?

4 A. Similarly for a -- because she had --
5 she and I had several discussions about the
6 issues and she was drafting an e-mail simply to
7 have my input that -- to have my input because I
8 was familiar with the situation for my input on
9 what she was relaying to Japan.

10 Q. Do you know if she ultimately contacted
11 with Mr. Fujiwara?

12 A. Yes, I believe she did. Yes.

13 Q. And do your notes that we were just
14 looking at reflect the results of that?

15 MR. BERMAN: Can we flip back. You can
16 close Exhibit 31.

17 THE WITNESS: What was your question
18 again?

19 Q. Do these notes reflect the outcome of
20 Ms. Costa's e-mail to Ken?

21 A. (No verbal response.)

22 Q. I'm looking at line six and seven --

23 MR. BERMAN: If you scroll up a little,
24 Toni, it will make it easier for her. There
25 we go, line six and line seven.

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2 A. I'm sorry, the question once more.

3 Q. Sure.

4 A. Do these notes reflect --

5 Q. Do these notes reflect the outcome of
6 Ms. Costa's e-mail to Mr. Fujiwara?

7 A. Yes.

8 Q. What was the outcome?

9 A. As stated here in the notes --

10 THE WITNESS: Can you move the note to
11 the left, please.

12 A. The outcome was as stated in the notes.
13 He wrote back, disappointed. You need to talk to
14 us when you're here in November.

15 Q. Does it continue on from there that Ms.
16 Costa said that was too late or something to that
17 effect. What does it say?

18 A. Yes. DC said too late. Asked for phone
19 call. Ken agreed to call later in September 23rd
20 25th between Ken and Sakaguchi San.

21 Q. Why were Ken Fujiwara and Sakaguchi San
22 involved in this discussion?

23 A. Because Japan -- because the action that
24 Donna was looking to take -- potentially take on
25 Jennifer would need to be discussed with these

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2 individuals back in Japan.

3 Q. Okay. So when you say "the action to be
4 taken," you mean Jennifer Fischman's termination,
5 right?

6 MS. PRIMAVERA: Objection.

7 A. Potential termination, yes.

8 Q. At this time Ms. Costa was seeking to
9 terminate Ms. Fischman, right?

10 MS. PRIMAVERA: Objection.

11 A. Yes.

12 Q. Now, earlier on in your notes -- when we
13 were looking at the August 7th notes, remember we
14 looked at that comment on the second call, I've
15 been lying to her from day one?

16 A. Uh-huh.

17 Q. What does that comment mean?

18 MS. PRIMAVERA: Objection.

19 A. Donna --

20 MS. GUERON: Objection.

21 A. Donna from the very beginning did not
22 believe Jennifer was qualified for the general
23 counsel position. She was instructed by Japan to
24 appoint Jennifer to the position. When Donna
25 informed Jennifer of her promotion, she did not

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2 tell Jennifer those facts because, again, once
3 the decision was made, Donna was completely
4 invested in Jennifer succeeding in the role.

5 So the "I've been lying," that was a
6 false narrative upon which their relationship
7 went forward and that's what I interpreted the
8 comment "I've been lying" to mean.

9 Q. Okay. So here on this page that we're
10 looking at on August 19th, do you see below those
11 lines that you just read it says, I said I would
12 give it four weeks --

13 MR. BERMAN: If you scroll down to line
14 15 -- scroll down to the bottom half of the
15 page.

16 Q. -- where it says, I said I would give it
17 four weeks, who is that comment attributed to?

18 A. (No verbal response.)

19 Q. Who is giving it four weeks?

20 THE WITNESS: Can you scroll back up a
21 second.

22 A. That comment is attributed -- I would
23 interpret that as attributed to Donna.

24 Q. Okay. So that's Donna telling you that
25 she said she would give it four weeks?

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2 A. Yes.

3 Q. Who did she say that to? Is that about
4 Ken or someone else?

5 A. I believe the individuals in Japan.

6 Q. The next line there, 18, what does that
7 say?

8 A. Line 18 says, if you want to continue
9 this job you need to figure out your relationship
10 with DC. Talk, keep appraised, seek input, ask
11 questions when appropriate. DC has discussed
12 this in a general sense related to clients. You
13 have to ask questions. JF worried people
14 wouldn't trust her if she didn't have an answer
15 to everything.

16 Q. So what does that mean, that bottom
17 portion of the page?

18 MS. PRIMAVERA: Objection.

19 Q. What did you mean when you wrote this
20 down?

21 A. Again, this is just the notes from my --
22 from my a conversation with Donna.

23 Q. Okay. So when it says there either Pat
24 or DC need to have an honest conversation with
25 her, the "her" is Ms. Fischman, right?

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2 A. Yes.

3 Q. In what you described as this false
4 narrative, up to this point it still hadn't been
5 contributed, right, Ms. Fischman was never fully
6 informed of the facts?

7 MS. PRIMAVERA: Objection?

8 Q. Do I have that right?

9 A. Of the facts, yes, that I described,
10 yes.

11 Q. That comment on the bottom where it
12 says, JF worried people wouldn't trust her if she
13 didn't have an answer to everything. Am I
14 reading that right?

15 A. Uh-huh.

16 Q. Is that Donna relating a comment to
17 Jennifer or what is that?

18 A. That's -- let me see. That relates to
19 the fact that Jennifer had a tendency to feel she
20 needed to have an answer to everything and that
21 created difficulties at times in trying to have a
22 discussions on legal or technical points or --
23 yeah, just her -- the way in which she would, you
24 know, sometimes converse and just circuitously
25 debate a point because she had difficulty

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2 admitting she didn't know something and felt she
3 had to know everything or have an answer to
4 everything.

5 Q. Your notes continue on to the next page,
6 which says page two at the top left corner.

7 MR. BERMAN: Scroll down there.

8 Q. On line three there it has a comment,
9 she has it in her head she can do this job
10 without help. Nobody can do that. She's going
11 so far counter to good sense. Did I read that
12 correctly?

13 A. Yes.

14 Q. That's referring to Ms. Fischman, right?

15 A. Uh-huh.

16 Q. Okay. And then continuing on down to
17 line eight, the first three months I stayed out
18 of her hair. Am I reading that right?

19 A. Yes.

20 Q. She never came to me, am I reading that
21 right?

22 A. Yes.

23 Q. On line 19, I recognize I've been
24 judgmental?

25 A. Yes.

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2 Q. What does the rest of that sentence say?

3 A. I recognize I've been judgmental but the
4 less she comes, the more I become judgmental.
5 But I could definitely -- I could def -- I don't
6 know -- better if I'd been involved in decisions
7 up front. Up to her to communicate with me.

8 Q. And then turning to the next page, line
9 nine, what does that say?

10 A. I haven't been directly honest.

11 Q. Is that the same issue you described as
12 the false narrative?

13 A. I would add that this also includes the
14 fact that in trying to give Jennifer space and at
15 one point Donna wanted to have a more open
16 conversation with her -- I believe it was
17 referred to as why the acting GC title versus GC,
18 Jennifer said not now.

19 And so this comment to me isn't -- I
20 interpret it as Donna did want to provide
21 feedback to Jennifer, respected Jennifer needing
22 space to grow in her job, and is now saying, I
23 haven't been directly honest because she hasn't
24 had the opportunity to be -- one of the reasons
25 being she hasn't had the opportunity to be

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2 directly honest.

3 Q. Turning to the next page, 2540. This is
4 a note from August 25th regarding Kelli Troccoli;
5 is that correct?

6 A. Yes.

7 Q. And you got a call from Donna Costa and
8 this memorializes that?

9 A. Yes.

10 Q. Is your discussion with Ms. Troccoli or
11 Ms. Costa in these notes?

12 A. In these notes it is a call from Donna
13 relaying the situation about Kelli.

14 Q. Okay. And line 25, does it say nobody
15 respects her, terrible manager?

16 A. Yes.

17 Q. Okay. So Donna is relating to you that
18 Ms. Troccoli commented that nobody respects Ms.
19 Fischman and Ms. Fischman is a terrible manager;
20 is that correct?

21 A. Yes.

22 Q. All right. Flipping forward to next
23 page 2541. This is conversation or these are
24 notes from August 27th, correct?

25 MR. BERMAN: Scroll up a little, please.

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2 Q. Does this reflect a direct conversation
3 between you and Ms. Troccoli?

4 A. Yes.

5 Q. It continues on to the next page right.

6 MR. BERMAN: So please flip down to the
7 next page.

8 Q. Go to line 16, this is the same
9 conversation, right, with you and Ms. Troccoli?

10 A. Yes, as best as I can tell from the way
11 it's scrolled, yes.

12 Q. Ms. Troccoli commenting to you that Ms.
13 Fischman doesn't have the ability to do the job
14 because she's drowning and she is attacking us.
15 I'm looking at lines 16 through 18. Am I reading
16 that correctly?

17 A. Uh-huh.

18 Q. Okay. So you heard it from Donna and
19 now you're hearing it directly from Kelli, right?

20 A. (No verbal response.)

21 Q. Right, these negative --

22 A. Hearing what?

23 Q. Negative comments from Ms. Troccoli
24 about Ms. Fischman?

25 A. When you say "I heard it from Donna and

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2 now I'm hearing it from Kelli." I heard Donna's
3 report of the conversation she had with Kelli.

4 Q. Okay. Turning to the next page. It
5 says page three according to your notes. If you
6 look at the top left corner it says P3, that's
7 page three, right?

8 A. Yes.

9 MR. BERMAN: Scroll down a little more,
10 please, and we'll look at the margin on the
11 left.

12 Q. What does this note say?

13 A. KT told DC I wish DC would say to us I'm
14 doing an evaluation of Jennifer and want your
15 honest feedback.

16 Q. So what does that note reflect?

17 A. Just Kelli's comment to me.

18 Q. So she's informing you that she conveyed
19 to Ms. Costa that Ms. Troccoli wanted an
20 opportunity to provide information to go into an
21 evaluation for Ms. Fischman, is that right?

22 MS. PRIMAVERA: Objection.

23 A. It was kind of long -- can it be read
24 back?

25 MR. BERMAN: I'll rephrase the question.

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2 Q. Does this reflect a comment that Ms.
3 Troccoli made to you concerning Ms. Fischman?

4 A. Yes. Indirectly, yes.

5 Q. Let's flip to pages 2546 and 47. This
6 is an August 28th note and it says at the top DC
7 meeting with JF.

8 A. Uh-huh.

9 Q. Is this -- what are these notes? Are
10 these notes reflecting a meeting between three
11 people and you're participating or something
12 different?

13 A. No, this reflects Donna's report to me
14 of her meeting with Jennifer.

15 Q. Okay. So Donna had a meeting with Ms.
16 Fischman and she's telling you about it?

17 A. Yes.

18 Q. And the top line there says, I
19 understand --

20 THE WITNESS: Excuse me for
21 interrupting. Can it be moved to the left
22 so I can see.

23 Q. Can you see it now?

24 A. Yes.

25 Q. Does this say, I understand you went to

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2 PS office, that's you?

3 A. Yes.

4 Q. You're PS?

5 A. Yes.

6 Q. And said X, Y, Z?

7 A. Yes.

8 Q. That was overheard. Who told KT. KT
9 made a formal complaint. Am I reading that
10 correctly?

11 A. Yes.

12 Q. What does that mean?

13 A. Donna was telling Jennifer that she
14 understands she went to my office and said
15 certain things. Those things were overheard.
16 And I believe Jennifer asked who told Kelli -- in
17 other words, who was the person who overheard and
18 told Kelli and then Kelli made a formal
19 complaint.

20 Q. Okay. Turning to the next page, page
21 two of the same conversation it looks like.

22 THE WITNESS: Can we take a quick break?

23 MR. BERMAN: Of course.

24 (Whereupon, a brief recess was taken.)

25 Q. Does this reflect page two of the same

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2 conversation?

3 A. Yes.

4 Q. If you look at line five, what does that
5 say?

6 A. We need chart of her absences she
7 created.

8 Q. Okay. Who is saying that to whom?

9 A. Donna is saying that to me.

10 Q. Okay. And what does that mean?

11 A. Jennifer created a chart of Kelli's
12 absences that included both absences for the
13 medical reasons as well as other absences out of
14 the times when she was out of the office.

15 Q. Did you have an understanding why Donna
16 expressed the need for the chart?

17 MS. PRIMAVERA: Objection.

18 A. Yes, because we were -- we were going to
19 conduct an investigation into Kelli's claim that
20 Jennifer was retaliating against her for being
21 out for medical reasons.

22 MR. BERMAN: If you flip to the next
23 page.

24 Q. This is a note from August 31, 2015.

25 A. Uh-huh.

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2 Q. At the top where it says line two, is KT
3 notifying JF properly?

4 A. Yes.

5 Q. What is this note about, is this
6 reflecting a conversation with someone? It looks
7 like there's a phone number on the top left
8 corner.

9 A. Yes, that was a phone conversation
10 between myself and Donna.

11 Q. What does it mean on line two, is KT
12 notifying JF properly?

13 A. As best as I can recall I believe she
14 was questioning is Kelli notifying Jennifer
15 properly whenever she's out of the office.

16 Q. Okay. And then line 18, do you see --

17 MR. BERMAN: Can you scroll down.

18 THE WITNESS: I can't see the whole
19 thing.

20 Q. Can you see line 18?

21 A. Line 18, chart -- as much as I can see
22 it says chart should only have personal, not
23 medical. There may be a word cut off -- personal
24 absences -- chart should only have personal
25 absences, not medical.

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2 Q. Did you discuss -- did you discuss --

3 MR. BERMAN: Withdrawn.

4 Q. When it says, chart should only have
5 personal absences, not medical, does that mean
6 the chart going forward should have that
7 information in it or retrospective or something
8 else, what are we talking about here?

9 A. No, we're talking about looking at the
10 chart that Jennifer created and did it have both
11 personal as well as medical and that it should
12 have only personal.

13 Q. So at this point in time you're already
14 investigating or are you considering doing an
15 investigation?

16 A. No, we're planning to do an
17 investigation.

18 Q. Weren't you a witness to the underlying
19 facts being investigated?

20 MS. PRIMAVERA: Objection.

21 MS. GUERON: Objection.

22 A. I was involved, yes, in discussions
23 between -- with Jennifer and with Kelli.

24 Q. So was there a discussion about having
25 an outside third-party investigate?

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2 A. Not at this time, no.

3 Q. Okay. Didn't Ms. Fischman come to you
4 for advice on how to handle her interactions with
5 Kelli and Kelli's absences?

6 A. Yes.

7 MR. BERMAN: Let's flip to page 2566,
8 please.

9 Q. So this note indicates a date of
10 4/29/2015 on the top left corner and the top
11 section says -- it looks like Pru actuaries re:
12 DB plans, am I reading that correctly?

13 A. Yes.

14 Q. Was there an issue regarding the
15 recording of defined benefit, plans?

16 A. Yes.

17 Q. And were you working with outside
18 counsel with respect to issues of plan recording
19 to the Pension Benefit Guarantee Corp.?

20 A. We were working -- yes, we had outside
21 couple on this matter.

22 Q. Was that matter ultimately resolved
23 without any liability to MCHA?

24 MS. GUERON: Objection.

25 A. Yes, but MCHA did not have ADB plan so

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2 it would not have any liabilities.

3 Q. So one of -- one -- was MCHA'S client
4 the one with the defined benefit issue -- was it
5 a client?

6 A. I'm sorry, I was thinking back. I just
7 want to -- the previous issue we were just
8 talking about was MCHA, right, you didn't ask me
9 MCHC?

10 Q. No, MCHA.

11 A. MCHA, okay.

12 Q. So I don't want -- I'm trying to be
13 delicate about handling client matters and
14 questioning over them.

15 Is it fair to say MCHA had a client that had
16 a defined benefit plans and there were a couple
17 of issues about reporting for the plans to the
18 Pension Benefit Guarantee Corp.?

19 A. Well, MCHA doesn't have clients, they
20 were business affiliates within the control group
21 of companies in the US who had defined plan
22 benefit plans. And there was an issue that arose
23 in regard to reporting that because we're so
24 disjointed was not done on a controlled group
25 basis.

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2 Q. Was this matter resolved without any
3 liability to any affiliate companies?

4 A. Yes.

5 Q. Were you a participant in handling this
6 project with outside counsel?

7 A. Yes.

8 Q. Was the point of contact Joan?

9 A. Yes.

10 Q. Do you recall her last name?

11 A. I'll spell it,

12 P-E-I-F-F-E-R-B-R-A-N-D-T.

13 MR. BERMAN: Let's scroll down to page
14 2587.

15 Q. So this note is dated 11/11/2015 and at
16 the top it says DC, JF notice; do you see that?

17 A. Yes.

18 Q. Okay. So does this reflect informing
19 Ms. Fischman about her demotion?

20 A. Yes.

21 Q. Do you see the top line there on line
22 one?

23 A. Yes.

24 Q. What does that say?

25 A. Delete e-mails.

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2 Q. What is that in reference to?

3 A. I believe that was in reference to
4 notifying IT to preserve -- well, let me back up.
5 No, I don't know what that refers to. I do not.
6 And I'm sorry, I started to think what it might
7 and that would be -- I don't know for sure what
8 that meant.

9 Q. Okay. Did you have e-mail
10 communications with Ms. Costa concerning Ms.
11 Fischman's demotion?

12 A. I had several e-mail communications.
13 That's a very broad question regarding her
14 demotion. I mean, can you be more specific.

15 Q. Sure. Did you have any e-mail
16 communications with Ms. Costa concerning the
17 decision or the decisionmaking process that led
18 to Ms. Fischman's demotion?

19 A. Well, for example, there was the one
20 e-mail where she asked me to review the e-mail
21 she was going to send to Japan. So there could
22 have been any number of those types of e-mails
23 that were all related to the demotion.

24 Q. Okay. During your time at MCHA did you
25 have a policy about how long you should retain

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2 e-mails for?

3 A. To my knowledge you didn't delete
4 e-mails.

5 Q. Okay. Do you know whether Ms. Costa
6 deleted any e-mail concerning Ms. Fischman?

7 MS. PRIMAVERA: Objection.

8 A. I don't know.

9 Q. Okay. Do you know whether upon Ms.
10 Costa's promotion from general counsel to
11 president, she deleted any of her e-mails?

12 MS. PRIMAVERA: Objection.

13 A. I don't know that.

14 Q. Do you have any e-mail communications
15 with Ms. Costa concerning the identification of a
16 candidate for general counsel other than Ms.
17 Fischman?

18 A. No, I don't believe so. I don't recall.

19 Q. Did there come a time when it was
20 decided that Ms. Fischman should be replaced with
21 a different person in the role of general
22 counsel?

23 A. Yes.

24 Q. Okay. How did that decision come to
25 pass?

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2 A. How did the decision that she would be
3 replaced?

4 Q. Yes.

5 A. Through --

6 Q. How was that -- how did that -- go
7 ahead.

8 A. Through Donna's communication with Japan
9 and -- yeah, through communications with Japan
10 and the decisionmaking process.

11 Q. Did anyone seek to attract outside
12 applicants for the position?

13 A. At what point?

14 Q. At any point in that process did outside
15 candidates get recruited?

16 MS. GUERON: Objection.

17 A. We're talking at the time Jennifer was
18 replaced?

19 Q. Yes. So Ms. Fischman was ultimately
20 replaced with Mr. Oliva, correct?

21 A. Right.

22 Q. And Mr. Oliva had previously worked at
23 Mitsubishi earlier in his career, correct?

24 A. Correct.

25 Q. And at some point in time MCHA

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2 determined that it wasn't going to continue
3 maintaining Ms. Fischman in the acting general
4 counsel and chief compliance officer role,
5 correct?

6 MS. PRIMAVERA: Objection.

7 A. Yes.

8 Q. Okay. So once that determination had
9 been made, did the company look for external
10 candidates?

11 MS. GUERON: Objection.

12 A. I didn't personally look for external
13 candidates. And, again, we knew Japan would not
14 -- we knew previously Japan did not want to spend
15 money for recruiting. But as I recall, I believe
16 some calls were made maybe to recruiters. I
17 don't -- I don't know. I don't recall. I don't
18 recall that.

19 Q. Okay. Setting aside recruiters who were
20 paid commissions for finding candidates, do you
21 know whether any job postings were placed for the
22 opening?

23 A. No.

24 Q. On or about October of 2015 was Mr.
25 Oliva invited in for interviews?

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2 A. Yes.

3 Q. Were any other candidates invited in for
4 interviews other than Mr. Oliva?

5 A. No.

6 Q. Were you included in the decision to
7 hire Mr. Oliva?

8 A. I did interview him. I was one of
9 others in the office.

10 Q. Okay. So you provided your feedback
11 based upon your evaluation of Mr. Oliva during
12 your interview with him?

13 A. Yes.

14 Q. Okay. Setting aside your feedback as a
15 result of that interview or interviews, did you
16 have any other involvement in the process of
17 selecting Mr. Oliva for the position?

18 A. No.

19 Q. Do you know whether any other candidates
20 other than Mr. Oliva were considered for the
21 position?

22 A. Yes -- from what I recall of discussions
23 with Donna, she considered others.

24 Q. So you from your conversations with Ms.
25 Costa you understood that she had considered

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2 other candidates?

3 A. Yes.

4 Q. Did you see any of their resumes?

5 A. No.

6 Q. Did you see Mr. Oliva's resume?

7 A. Yes.

8 Q. Did you interview any other candidate
9 other than Mr. Oliva?

10 A. No.

11 Q. Mr. Oliva interviewed with other
12 employees of MCHA, right?

13 MS. PRIMAVERA: Objection.

14 A. A very limited number.

15 Q. Did you schedule those interviews?

16 A. I don't recall who scheduled them.

17 Q. Well, would scheduling the interviews be
18 an administrative function?

19 A. Yes.

20 Q. Who would be responsible for handling
21 that function normally?

22 A. Most likely Yuka Matsugu, Y-U-K-A
23 M-A-T-S-U-G-U. I honestly don't recall
24 specifically how the scheduling occurred for
25 mixed interviews.

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2 Q. Is it fair to say you were interested in
3 keeping apprised of the progress in hiring a new
4 general counsel?

5 A. Yes.

6 Q. So did you come to learn of any other
7 candidates being considered for the position
8 other than Mr. Oliva?

9 A. No.

10 Q. Who made the decision to hire Mr. Oliva?

11 A. Donna.

12 Q. Was Donna required to obtain any
13 approvals in hiring Mr. Oliva?

14 A. I believe the approval process -- yes,
15 it would have had to go back to Japan.

16 I do want to clarify that, you know,
17 what I understand about what Japan approves and
18 disapproves on, you know, something like that,
19 the clear authority line wouldn't be something
20 that I have an intimate knowledge of.

21 Q. Okay. But it's your understanding that
22 MCHC was consulted on the decision?

23 A. Yes.

24 Q. Okay. We've already seen that MCHC was
25 consulted on the decision to demote Ms. Fischman,

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2 right?

3 MS. PRIMAVERA: Objection.

4 A. Yes.

5 Q. Okay. Who made the determination as to
6 which title would be applied to Mr. Oliva when he
7 joined the company?

8 A. I believe it was Donna.

9 Q. Okay. So did Ms. Costa make the
10 decision to hire him as a general counsel and
11 chief compliance officer as opposed to an acting
12 general counsel and chief compliance officer?

13 A. Yes.

14 Q. Are you aware of any discussion or
15 consideration of hiring him in on an acting
16 basis?

17 A. Not that I recall.

18 Q. Okay. When Ms. Fischman was considered
19 for the position that she was ultimately promoted
20 into, didn't you describe for me that there was
21 going to be a one year review period applicable
22 to her?

23 A. Yes, a one year period to assist her in
24 developmentally getting to the level of GC, yes.

25 Q. Was any such review period applicable to

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2 Mr. Oliva?

3 MS. PRIMAVERA: Objection.

4 A. No.

5 Q. Do you know why not?

6 A. No.

7 Q. Do you know whether after she was
8 transitioned back into the assistant general
9 counsel role, Ms. Fischman received an exceeds
10 expectations performance review?

11 A. I'm sorry, when she transitioned back
12 to?

13 Q. In 2016 --

14 A. Right.

15 Q. -- Ms. Fischman was in the assistant
16 general counsel role again, right?

17 A. Yes.

18 Q. In that position, did she receive an
19 exceeds expectations rating for her performance
20 in 2016?

21 A. I believe she did, yes.

22 Q. Earlier in 2016, are you aware of an
23 issue concerning the termination of Amber Todd?

24 A. No.

25 Q. Are you familiar with one of the

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2 companies affiliates MKIC?

3 A. Yes.

4 Q. You have some notes concerning
5 discussions with Yvonne concerning MKIC.

6 MR. BERMAN: You can flip to those, page
7 2612 towards the end.

8 (Whereupon, a brief recess was taken.)

9 Q. Take a look at this and let me know if
10 this refreshes your recollection about Amber
11 Todd.

12 THE WITNESS: Can you scroll up -- down.

13 A. I read it, yes.

14 Q. Does this refresh your recollection as
15 to whether there was any issue concerning Amber
16 Todd's departure from the company?

17 A. When you say "any issue," other than
18 what's written on the page, I don't have any -- I
19 -- other than what's written on the page, no.

20 Q. Okay. Do you know whether Ms. Todd
21 requested a severance package for her departure?

22 A. I do not know.

23 Q. Do you know whether her husband had
24 previously worked for the company, Dan Todd?

25 A. Yes, he did work for the company.

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2 Q. Do you know whether he got a severance
3 package?

4 A. I don't know.

5 Q. Do you know whether --

6 MR. BERMAN: Withdrawn.

7 Q. Did Ms. Fischman come to you about the
8 issue of whether Amber Todd should get a
9 severance package?

10 A. No. No.

11 Q. So she didn't complain to you that Amber
12 Todd was being unfairly treated because she
13 wasn't getting severance?

14 A. Not that I recall.

15 Q. Okay. Did you have I in other
16 discussions about providing Amber Todd with
17 severance?

18 A. No. No.

19 Q. For 2016 did Ms. Fischman receive a
20 bonus?

21 A. 2016.

22 Q. Let me provide you with some additional
23 context that may help.

24 A. Thank you.

25 Q. For the year 2016 Ms. Fischman occupied

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2 two different titles, right, she was --

3 A. Yes.

4 Q. -- she was in one title for four months
5 and the other title for eight months, right?

6 A. Right. Right.

7 Q. Does that refresh your recollection as
8 to whether she received a bonus for the year?

9 A. So that's the bonus that would have been
10 paid. I'm sorry, I'm trying to do the dates in
11 my head. Are you -- because there's -- the
12 performance is based on a calendar year and then
13 the bonus doesn't get paid out until the
14 following May.

15 So the May, 2016 bonus, is that what
16 you're referring -- a bonus paid in May of 2016
17 but for 2015 performance, she received a bonus,
18 yes.

19 Q. And she got the full amount of her
20 bonus, right?

21 A. She got the full amount of her bonus for
22 her period that she was the acting general
23 counsel and then the assistant general counsel.

24 Q. And each of those bonuses were prorated
25 for the portion of time in those respected

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2 positions, correct?

3 A. Correct.

4 Q. So if she was in the GC position or the
5 acting GC position for four months, she got a
6 prorated 25 percent bonus covering 25 percent of
7 the year, right?

8 A. Covering a full rated -- 25 percent
9 bonus covering her salary as GC at the time and
10 the same as assistant GC.

11 Q. So she got --

12 A. The same -- meaning the same approach.

13 Q. Right. So 17 percent for the assistant
14 general counsel, 25 percent for the acting
15 general counsel role, right?

16 A. That's correct.

17 Q. Was there any discussion about giving
18 her a reduced amount of bonus?

19 A. No --

20 Q. Okay.

21 A. -- not that I recall.

22 Q. Who determined the amount of bonus that
23 would be paid to Ms. Fischman after she had been
24 in two different positions during the same
25 calendar year?

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2 A. What do you mean by "who determined"?

3 Because it she -- was in the position -- this was
4 the agreed upon structure and so it was paid out
5 to her. So --

6 Q. Okay.

7 A. -- does that answer your question?

8 Q. Yes. So I think earlier today we talked
9 through a chart in your document where it showed
10 a \$300,000 rate of base compensation and a 25
11 percent bonus applicable to the general counsel
12 level and a 17 percent for the level below that,
13 right?

14 A. Right.

15 Q. And I think I misspoke before about the
16 time allocation because Ms. Fischman was in the
17 acting general counsel role for eight months and
18 she was in the assistant general counsel role for
19 four months of the year 2015, right?

20 A. She would have been considered in the
21 acting general counsel role from April until,
22 approximately, the November timeframe. And then
23 the assistant general counsel for the remainder
24 -- from January, February, March and the
25 remainder of the year.

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2 Q. Okay. So based upon what you just
3 described, these weren't discretionary bonuses,
4 they were set at the beginning of the year and
5 they were applied at the end of the year; is that
6 correct?

7 A. Correct.

8 Q. Did you meet with Ms. Fischman after she
9 was notified about her demotion?

10 A. Yes, we did -- we did have a meeting as
11 I recall shortly after that, yes.

12 Q. What did she say to you and what did you
13 say to her?

14 A. In regard to?

15 Q. In regard to her demotion.

16 A. I don't know what you're asking me as
17 far as -- we discussed some transition issues --

18 Q. Okay.

19 A. -- the office -- she was going to be
20 returning to her office.

21 Q. Okay. Did she express to your her
22 unhappiness with the fact she was being demoted?

23 A. I don't recall that she expressed
24 unhappiness, no.

25 Q. Did she comment to you about her being

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2 replaced by a male?

3 A. She -- yes, she did make a remark that
4 the company hired a male.

5 Q. Hired a male to replace her?

6 A. I don't recall the specific words she
7 used.

8 Q. What was your sense of the substance of
9 the remark?

10 A. It was a remark made to me in a passing.

11 Q. Did you understand her to be complaining
12 of unfair treatment?

13 A. It was not a complaint.

14 Q. It was not a complaint. Based on what?

15 MS. PRIMAVERA: Objection.

16 MS. GUERON: Objection.

17 A. As best as I can recall the
18 conversation, it was not a complaint.

19 Q. All right. Did there come a time when
20 the decision was made to terminate Ms. Fischman?

21 A. Yes.

22 Q. Were you involved in that decision?

23 A. Yes.

24 Q. Okay. And what was your involvement in
25 the decision to terminate Ms. Fischman?

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2 A. I was in a meeting with Nick and Donna
3 -- I was called to Donna's office, Nick was there
4 and there was discussions surrounding the actions
5 that had occurred with Jennifer.

6 Q. Are you referring to the Genomatica
7 matter?

8 A. Yes.

9 Q. Do you know whether there was an
10 investigation conducted into Jennifer's handling
11 of the Genomatica matter?

12 A. There was no investigation to my
13 knowledge.

14 Q. Okay. Did you have any discussions with
15 Donna only concerning the Genomatica matter and
16 Ms. Fischman's handling of it?

17 A. Not that I recall with Donna only, no.

18 Q. Did you have any conversations with Mr.
19 Oliva only about Ms. Fischman's handling of the
20 Genomatica matter?

21 A. No, not that I recall.

22 Q. Okay. How many conversations did -- but
23 you did have conversations where the three of you
24 discussed Ms. Fischman's termination?

25 A. Yes.

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2 Q. When was the first of those
3 conversations?

4 A. The first of the conversations was --
5 are you asking me for the date?

6 Q. If you know, sure.

7 A. I believe it was the 19th of January,
8 2017.

9 Q. Okay. Do you recall the substance of
10 the conversation?

11 A. I -- I mean, in general -- I recall, in
12 general, we discussed there was discussion back
13 and forth about the e-mail that Nick had received
14 from Japan, expressing the surprise of the
15 settlement offer that had been made and there
16 was, you know, some discussions surrounding that
17 and.

18 MR. BERMAN: Can we turn to page 2640,
19 Toni.

20 Q. Are you able to see the top left corner
21 with the date?

22 A. Uh-huh.

23 Q. Are these your notes from January 19,
24 2016 conversation with Mr. Oliva and Ms. Costa
25 concerning Ms. Fischman?

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2 A. Yes.

3 Q. So the first line there, does that say
4 you need to earn my trust again?

5 A. Yes.

6 Q. Why did you write that on this page,
7 what does that mean?

8 A. What this means to me is a thought
9 process from Nick in deciding -- you know, a
10 thought process from Nick as to the decision he
11 would make regarding Jennifer's termination.

12 Q. Okay. What was that thought process?

13 A. In regard to what the appropriate
14 disciplinary action should be.

15 Q. Okay. Did he solicit your input as to
16 the appropriate disciplinary action?

17 A. I was part of the overall discussion.

18 Q. Okay. Did you make a recommendation as
19 to the appropriate disciplinary action?

20 A. No, that's not my role.

21 Q. Did Ms. Costa make a recommendation?

22 A. A recommendation?

23 Q. As to the appropriate --

24 A. I don't recall specifically but she was
25 part of the conversation.

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2 Q. So you don't recall her recommending any
3 specific form of discipline?

4 A. Correct. I believe -- I believe --
5 well, again, I don't want to guess. You know,
6 just -- the conversation in total came down to
7 Nick's decision as to the disciplinary action.

8 Q. Okay. Did he inform you as of the 19th
9 what form of discipline he had decided upon?

10 A. He had decided upon termination.

11 Q. Did he inform you of that during this
12 meeting on the 19th?

13 A. Yes, my understanding was he would --
14 that was his decision, yes.

15 MR. BERMAN: Can you scroll down,
16 please, Toni.

17 Q. Do these comments reflect the actions
18 taken as a result of this meeting?

19 A. Yes.

20 Q. Okay. When it says write to Japan, who
21 was responsible for that?

22 A. Nick.

23 Q. Did you have any other meetings between
24 the 19th and the time when Ms. Fischman was
25 terminated?

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2 A. Yes, I believe there was a meeting with
3 Donna the following week.

4 Q. Was that January 23rd?

5 A. I don't recall the exact date.

6 Q. Do you know why we don't have any
7 meetings or meeting notes from that date?

8 We have meeting notes from your meeting from
9 the 19th and we have them from the 30th when Ms.
10 Fischman was terminated.

11 Do you know why we don't have the meeting
12 notes from the meeting between the 19th and the
13 30th?

14 MS. GUERON: Objection.

15 A. No, I don't know why.

16 Q. Can you tell me what transpired during
17 that meeting, meeting number two?

18 A. I believe it was just was to confirm the
19 severance issue.

20 MR. BERMAN: I take it back. We do
21 have -- we do have meeting notes from
22 meeting on the 26th. Let's look at those.
23 I apologize. It's page 2625.

24 Q. All right. So it looks like this is a
25 note from a meeting on the 26th of January 2017;

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2 is that correct?

3 A. Yes.

4 Q. It says on the top, DC, arrow, JF. What
5 does that reflect?

6 A. Donna Costa -- just my way of Donna and
7 Jennifer being a subject -- one of the subjects
8 of this meeting.

9 Q. Okay. So if you can scroll down to line
10 11. Can you read to me, please, lines 11 through
11 17.

12 A. We can lose our ability to collect from
13 insurance if we offer severance. Options. We
14 offer severance and on hook for all money or term
15 for cause and offer nothing. Decision from DC,
16 no severance. Read script as approved by
17 Mercedes, PS, NO.

18 THE WITNESS: Can you scroll down,
19 please.

20 Q. PS are your initials and Mr. Oliva's
21 initials?

22 A. Yes.

23 Q. What does the next comment say?

24 A. Not giving me dollar. Why don't you
25 take your time to think about this and if there's

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2 something you want to discussion with us then.
3 Benefits of no severance. Insurance. She will
4 hire counsel and we then get to turn it over to
5 Mercedes.

6 Q. What's the last line?

7 A. Immediate walk out, no access to
8 anything.

9 Q. Do you know whether the company, MCHA,
10 had insurance to cover employment law claims?

11 MS. GUERON: Objection.

12 A. Yes.

13 Q. And pursuant to that insurance, was
14 there some financial benefit to the company of
15 not providing severance to someone who might make
16 an employment law claim?

17 MS. PRIMAVERA: Objection.

18 MS. GUERON: Objection.

19 A. Can you repeat that.

20 MR. BERMAN: Can you please read back
21 the question, Toni.

22 (Whereupon, last question read back.)

23 MS. PRIMAVERA: Objection.

24 MS. GUERON: Objection.

25 THE WITNESS: There's -- I'm sorry, but

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2 I know this is important. Can you, please,
3 read it again.

4 (Whereupon, the last question read
5 back.)

6 A. I don't -- I don't know the answer to
7 that.

8 Q. Well, there's a note here on line 11, we
9 can lose our ability to collect from insurance if
10 we offer severance. It says that on your note,
11 right?

12 A. Yes.

13 Q. Okay. So in your view, was the decision
14 not to provide Ms. Fischman severance partially
15 motivated by the insurance coverage that was
16 available?

17 MS. GUERON: Objection.

18 A. No.

19 Q. Then why did you write this?

20 MS. PRIMAVERA: Objection.

21 MS. GUERON: Objection.

22 A. Jennifer was terminated for cause and
23 she was terminated for actions that were
24 egregious and for that reason we determined that
25 she would not receive severance. And that

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2 determination was made in the meeting -- the
3 prior meeting Nick, Donna and myself.

4 Q. The meeting on the 19th?

5 A. Yes.

6 Q. Okay.

7 A. These notes reflect the fact that with
8 any termination there's risks and you take in
9 when you're -- you take into consideration from a
10 business decision standpoint all of the risk
11 factors and the company had the insurance and it
12 was a fact in the facts and circumstances of the
13 situation that we were evaluating regarding
14 Jennifer's termination.

15 Q. Have you completed your response?

16 A. The only thing I will add that I recall
17 about these notes on this day, I was not familiar
18 with EPL insurance and how it works and so this
19 discussion -- particularly the way the notes are
20 written was more of an academic discussion that I
21 was having with Donna at the time on EPL. But
22 the decision regarding her termination and
23 severance were made in a prior meeting.

24 Q. Your notes from the prior meeting don't
25 discuss severance, do they?

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2 A. They do not.

3 Q. They only discuss termination, right?

4 A. Correct.

5 Q. The note from this meeting discuss
6 severance?

7 A. Yes.

8 Q. And there are two separate decisions to
9 be made; number one, are we going to terminate
10 Ms. Fischman; and number two, what are terms of
11 the termination going to be, correct?

12 MS. PRIMAVERA: Objection.

13 A. Yes.

14 Q. Okay. So I am going to recast my
15 question.

16 Was the decision to not provide Ms. Fischman
17 with severance motivated in part by the insurance
18 coverage available?

19 MS. PRIMAVERA: Objection.

20 A. No.

21 Q. Let's turn to page 2627, which I believe
22 is the second to last document.

23 MR. BERMAN: Can we see the top left
24 portion of the page, please.

25 Q. It appears to be dated March 15, 2017;

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2 do you see that?

3 A. Yes. It's very faint but I do.

4 Q. Are these note reflecting a meeting or
5 conversation you had with Ms. Costa?

6 THE WITNESS: Can you scroll -- can you
7 make it slightly bigger it's faint and I'm
8 having a hard time reading it.

9 Move it to the left a little. Scroll
10 down, please.

11 MR. BERMAN: There's more material on
12 the lower page.

13 THE WITNESS: I've read it.

14 Q. So what do these notes reflect; is there
15 one conversation here or more than one
16 conversation, what are we looking at?

17 A. One conversation.

18 Q. Okay. Is this a conversation between
19 you and Ms. Costa?

20 A. Yes.

21 Q. What's the nature of your conversation?

22 A. Well, the nature of the conversation is
23 as the notes reflect.

24 Q. For example, if you look at line eight
25 it says, DC told Dennis and Steve --

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2 MR. BERMAN: Can you scroll up so she
3 can see.

4 Q. DC told Dennis and Steve positioned it
5 in casual way. Am I reading it right?

6 A. Right.

7 Q. Is this Dennis Trice that's being
8 referred to here?

9 A. Yes.

10 Q. And Steve who?

11 A. Yurich, Y-U-R-I-C-H.

12 Q. What is Ms. Costa informing you that she
13 told to Dennis and Steve?

14 A. Donna had an employment contract and at
15 this point her contract was due to renew a few
16 months down the road and she was in negotiating
17 with Japan regarding her contract and in and
18 informing -- you know, informing Dennis and Steve
19 that they may not -- she may not be able to reach
20 an agreement on her contract and, therefore, I
21 believe, could potentially be leaving the
22 company.

23 Q. Do you know what ultimately was the
24 result of the contract negotiations between Ms.
25 Costa and MCHA?

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2 A. Her contract was she did not continue
3 employment after contract ended.

4 Q. Okay. Did she move to another position
5 at an affiliate?

6 A. No.

7 Q. Do you know if she had any other
8 concurrent appointments at any other affiliates?

9 A. No.

10 Q. So, for example, do you know whether she
11 served on any of the boards of directors or
12 executive committees with any of the other
13 Mitsubishi affiliates?

14 A. Not after the time she left the company
15 -- at the time she left the company, no.

16 Q. Okay.

17 A. Not to my knowledge.

18 Q. Okay. If I can direct your attention
19 down to line 18. Can you tell me what it says
20 from there through the remainder of the page.

21 MR. BERMAN: Scroll down, Toni, so she
22 can see lines 18 through 24.

23 A. I see that.

24 Q. Can you read that to me so I can learn
25 what it says.

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2 A. Opportunity for Japan to not give me --

3 THE WITNESS: It's cut off. Just shift
4 left.

5 A. -- exec role since won't be here year
6 from now. That's what I can view.

7 Q. And then it continues on a few lines
8 more, doesn't it?

9 A. With Japan this is not what I --

10 THE WITNESS: Shift left for me, please.

11 A. -- this is not what I signed up for.
12 I've seen my role -- MCHA role whittled away.

13 MR. BERMAN: There are a couple more
14 lines, Toni. Can you scroll down so she can
15 see those, please.

16 A. What she would consider. Be on board of
17 Medicago and Matheson I think that is.

18 Q. Was Medicago an affiliate?

19 A. Yes.

20 Q. Was Matheson an affiliate?

21 A. Yes.

22 Q. So what does this notation reflect when
23 it says, opportunity for Japan to not give me
24 executive role since won't the hear a year from
25 now?

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2 A. I don't know what that refers to.

3 Q. Ms. Costa made that remark to you?

4 A. Yes.

5 Q. And you just wrote it down?

6 A. In reading that now, I don't know
7 exactly what she meant when she said that.

8 Q. Okay. What about the comment with
9 Japan, this is not what I signed up for I seen my
10 MCHA role whittled away, did she relate that
11 comment to you?

12 A. Yes, that's there in note.

13 Q. Do you have an understanding what she
14 meant by that comment?

15 A. Yes.

16 Q. What did she mean?

17 A. At this time MCHC was undertaking a
18 restructuring of the chemical companies and
19 combining them into one and under MCC and
20 creating a regional structure where there would
21 be within each of -- I can't recall -- I think it
22 was five, maybe six regions, certain functions.
23 And those functions included services; for
24 example, a marketing type function, environmental
25 health and safety, HR function that would serve

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2 all of the business affiliates in the regions.

3 Q. Did you complete your response?

4 A. No.

5 Q. Okay.

6 A. That particular structure -- that new
7 structure that would be in place going forward
8 would take on some of the roles that were being
9 performed by MCHA and therefore the role of MCHA
10 was diminished and Donna's role was diminished.

11 Q. Have you now complete your response?

12 A. Yes.

13 Q. Was Ms. Costa ever appointed to the
14 board of Medicago?

15 A. Not to my knowledge.

16 Q. Was she appointed to the board of
17 Matheson?

18 A. Not to my knowledge.

19 Q. When Ms. Costa's contract ended, do you
20 know who took over the role that she had been
21 occupying?

22 A. They replaced the president of MCHA with
23 another expat.

24 Q. Who is the expat that took over the
25 position?

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2 A. I'm sorry, I don't remember his name
3 because I had left at the same time. It may come
4 to me before we stop so...

5 Q. Okay. Let's add a blank here because
6 you'll be provided an opportunity to review and
7 sign the transcript. If you should happen to
8 recall the name, if you can just fill in the
9 plank as part of the errata process, that will be
10 helpful.

11 INSERT: _____
12 _____

13 Q. Can you firm for me that the person who
14 was placed into the position after Ms. Costa left
15 was male?

16 A. He was a Japanese male expat.

17 Q. Okay. Do you know whether he was in a
18 dual role, meaning he was both at MCHA and
19 working for MCHC?

20 A. Again, that's somewhat of a technical
21 statement to me. I don't know when they -- when
22 they have Japanese expats come, they're working
23 in the company, payrolled by us, paid in US
24 dollars. Technically are they still working for
25 MCHC, I don't know that technicality. But

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2 they're, again, fulfilling the role, for example,
3 of president of MCHA.

4 Q. Okay. With respect to the role of
5 president of MCHA, that role has certain duties
6 and responsibilities, right?

7 A. Yes.

8 Q. And it has compensation attached to
9 those duties and responsibilities, correct?

10 A. Yes.

11 Q. Who determines what the duties and
12 responsibilities of the president of MCHA are?

13 MS. GUERON: Objection.

14 A. I believe that's MCHC.

15 Q. Who sets compensation for that position?

16 MS. GUERON: Objection.

17 A. We have set that in -- we have set that
18 in the US.

19 Q. Whose "we"?

20 A. MCHA.

21 Q. Who at MCHA sets the compensation for
22 the president of MCHA?

23 A. The president of MCHA up until Donna
24 have been Japanese expats and the compensation
25 was generally set by -- I'm sorry, how can I

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2 explain this? It ties into these -- you know,
3 what's required through Visa immigration to
4 ensure we're paying a reasonable fair
5 compensation for tax purposes, you know, between
6 Japan and the US so the individual who
7 administered the expat program generally would
8 make the recommendation on, again, with all the
9 expats that were being dealt with, what a
10 reasonable salary would be for a president as
11 well as the other positions.

12 Q. Okay.

13 A. They're taking into consideration that
14 that's within reason as to what we would pay here
15 in the US in that type of position.

16 Q. Okay. So is that information -- is that
17 determined by one particular person at MCHA?

18 A. By Yoko Katihama (phonetic).

19 Q. Is that male or female?

20 A. Female.

21 Q. Okay. And who does Yoko Katiamama report
22 to?

23 A. Me, she reported to me.

24 Q. She was one of your directs reports?

25 A. Yes.

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2 Q. So when she made the recommendation as
3 to compensation for the president, did she make
4 the recommendation to you?

5 A. Yes, we would -- we would, generally,
6 discuss, yes, the comp. Yes.

7 Q. With respect to the increase in Ms.
8 Costa's salary that she received, who made that
9 determination when she was president?

10 A. I don't know. I don't know who made
11 that determination.

12 MS. PRIMAVERA: Objection.

13 Q. Do you know whether MCHC had to approve
14 the compensation of MCHA'S president?

15 A. I don't know.

16 Q. Okay. During your tenure at MCHA, other
17 than Ms. Costa, was there ever at any point in
18 your tenure another female president?

19 A. At MCHA?

20 Q. Yes.

21 A. No.

22 Q. Was there ever a female board member at
23 MCHA --

24 MS. GUERON: Objection.

25 Q. -- during your time there?

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2 A. Jennifer would have been on the board.

3 Q. Jennifer was on the board of directors
4 of MCHA?

5 A. I think in the board structure. I'm not
6 clear on this -- I'm not clear. I'm sorry.

7 Q. Okay, that's fine.

8 Do you know who the counter party on Ms.
9 Costa's contract was?

10 A. The counter party, as in the company?

11 Q. Yes.

12 A. I believe it was MCHC.

13 Q. Okay.

14 A. Again, I'm not -- I'm not entirely sure
15 thinking back.

16 Q. Okay. Do you know who signed her
17 contract from MCHC?

18 A. No.

19 Q. Do you know who Ms. Costa reported to in
20 her role as president?

21 MS. PRIMAVERA: Objection.

22 A. I don't recall who she reported to.

23 Q. During your tenure at MCHA, were you
24 aware of any other females who were acting in the
25 capacity of president at any of the affiliates?

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2 A. No --

3 Q. Okay.

4 A. -- I don't know of others.

5 Q. Do you know of any female board member
6 of any affiliates during your time at the
7 company?

8 A. I don't know of others.

9 Q. Okay. Do you know whether MCHC has ever
10 had a female president?

11 A. I don't know the MCHC structure.

12 Q. Do you know so -- this is a similar
13 question. Do you know whether any of MCHC's
14 board members have ever been female?

15 A. I don't know.

16 MR. BERMAN: Okay. Let's take a quick
17 break. I believe I may be done with my
18 questions. I just want to check my notes
19 and we will wrap up -- unless your counsel
20 wants to ask you anything.

21 (Whereupon, a brief recess was taken.)

22 Q. Ms. Saunders, so we've reviewed a number
23 of your notes here today. Was it your regular
24 practice to take notes of your business
25 conversations at MCHA?

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2 A. Yes.

3 Q. And any notes that you had concerning
4 Ms. Fischman's promotion to acting general
5 counsel would it have been reflected in your
6 notebooks; is that correct?

7 A. Yes.

8 MS. PRIMAVERA: Objection.

9 Q. Okay. Any note use took concerning Ms.
10 Fischman's demotion would also be reflected in
11 your notebooks, correct?

12 A. Yes.

13 Q. And any notes you took concerning Ms.
14 Fischman's termination would be reflect in your
15 notebooks, correct?

16 A. Yes.

17 Q. Is there any other place where we could
18 potentially locate documents concerning any of
19 those three events?

20 A. No.

21 Q. Okay. You have no additional documents
22 in your person covering that subject matter, do
23 you?

24 A. No.

25 Q. With respect to the general counsel

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2 position and the criteria, right, sitting here
3 today are you aware of any objective criteria
4 that Nick had for that position -- Mr. Oliva, had
5 for that position that Ms. Fischman did not
6 possess?

7 MS. PRIMAVERA: Objection.

8 MS. GUERON: Objection.

9 Q. Do you understand my question?

10 A. I understand your question. But, again,
11 I am not -- in my role as HR, I am not the person
12 who -- the expert to determine the qualifications
13 and the criteria and for the position.

14 Q. Okay. So then are you -- is it correct
15 you are not taking a position one way or the
16 other on Ms. Fischman's qualifications for the
17 position?

18 MS. PRIMAVERA: Objection.

19 A. On Ms. Fischman's qualifications for the
20 position, I'm not taking a position on it.

21 Q. Same question with respect to Mr.
22 Oliva's qualifications.

23 A. Correct.

24 Q. Okay.

25 MR. BERMAN: I have no further questions

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2 for you at this time. I want to thank you
3 very much for your cooperation today, Ms.
4 Saunders.

5 MS. PRIMAVERA: I just have one
6 follow-up question. Thank you so much, Pat,
7 it was a long day. I just want to clarify
8 one thing.

9 CROSS EXAMINATION

10 BY MS. PRIMAVERA:

11 Q. In your role as the director of human
12 resources, it was outside the scope of your
13 duties and responsibilities to assess an
14 attorney's qualifications as it relates to how
15 they would qualify for a particular position,
16 correct?

17 A. Correct.

18 Q. Thank you.

19 MS. PRIMAVERA: I have nothing further.

20 MR. BERMAN: Thank you all.

21 MS. GUERON: No questions.

22 THE REPORTER: Would anyone like to
23 order a copy of the transcript?

24 MS. PRIMAVERA: I will order and I will
25 provide Sam and Nicole a copy.

1 (Whereupon, the examination of this
2 witness was concluded at 6:26 p.m.)

3 A C K N O W L E D G M E N T

4 STATE OF)
 : ss
5 COUNTY OF)

6
7 I, PAT SAUNDERS, hereby certify that I
8 have read the transcript of my testimony taken
9 under oath in my deposition of September 30,
10 2021, that the transcript is a true, complete and
11 correct record of my testimony, and that the
12 answers on the record as given by me are true and
13 correct.

14

15

16

17

PAT SAUNDERS

18

19

20 Signed and subscribed to before
me, this day
21 of , 2021.

22

23

Notary Public, State of

24

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I N D E X

3

WITNESS

EXAMINATION BY

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Pat Saunders

Mr. Berman

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Ms. Primavera

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6

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7

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C E R T I F I C A T E

I, TONI MUSACCHIA, a Notary Public in and
for the State of New York, do hereby certify:

THAT the witness whose deposition is
hereinbefore set forth, was duly sworn by me and

THAT the within transcript is a true
record of the testimony given by such witness.

I further certify that I am not related,
either by blood or marriage; to any of the
parties to this action; and

THAT I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 12th day of October, 2021.

Toni Musacchia

TONI MUSACCHIA



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